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WESTMINSTER HALL:

OR

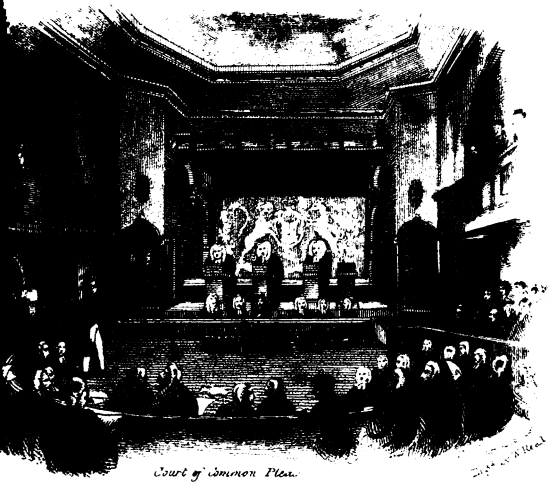
PROFESSIONAL RELICS

AND

ANECDOTES

OF THE BAR, BENCH, AND WOOLSACK.

VOL. III.



Court of Common Pleas.

LONDON:
JOHN KNIGHT & HENRY LACEY,
PATERNOSTER ROW.
MDCCCXXV.

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LAW AND LAWYERS.

THE REPORTS.

It is difficult to ascertain with accuracy the period at which the practice of reporting the decisions of our Courts of Justice first had its commencement. It seems probable that it began in the reign of Edward I. although there are no reported cases of that King's reign to be found in the year-books. A few broken cases are indeed contained in Fitzherbert's Abridgment, "but," says Sir M. Hale, "we have no successive terms or years thereof, but only ancient manuscripts perchance, not running through the whole time of this King." (*Hist. of the C. L. p.* 165.) He adds that "they are very good but very brief." From the commencement of the reign of Edward II. to that of Henry VIII. the year-books are continued in a tolerably regular series. Many scattered cases also, which are not to be met with in the year-books, may be found in the Abridgment of Fitz-

herbert, who must have derived them from collections of reports which have now perished.

Before the printing of the year-books, an acquaintance with reported decisions must necessarily have been very confined,* a fact which seems to be proved by the mode of argument observed at the Bar during the early period of our law. "The ancient order of argument by our Sergeants and Apprentices," says Sir Edward Coke, "at the bar, is altogether altered. They never cited any book, case, or authority, in particular† as "*it is holden in* 40 *Ed.* 3," &c. but "*est tenus ou agree in nre liures, ou est tenus adjudge in termes,*" or such like, which order yet remains at moots at the bar in the Inner Temple to this day." (*Preface to* 10 *Rep.* xii. *see also Selden's Dissertation on Fleta, p.* 212 *of the translation.*)

* Some idea of the scarcity and value of law-books at this early period may be formed by a reference to the solemn instrument or bond given by Selden in his Dissertation on Fleta, in which the party binds himself to restore, within a certain period, a copy of Bracton which he had borrowed. (*See Dissertation, p.* 18 *of the Translation.*)

† Perhaps this may account for the fact of several of our older text writers not citing any authorities in support of the positions which they lay down. This is the case both with Littleton and Fitzherbert in his *Natura Brevium.* (*See Coke's Preface to* 10 *Rep. and Bacon's Preface to his Maxims of the Law.*)

Mr. Reeves does not appear to have been aware that this was the customary mode at that period of supporting by authorities an argument in Court, and has supposed that in the reign of Edward III. there did not exist reports possessing sufficient authority to be cited in Court. "There were certainly," he observes, "no reports of established and general credit; otherwise it is not easy to imagine why no adjudications are vouched for what is laid down as law in the year-books of that reign. (Edw. 3.) According to the form of these reports everything is to be taken on the bare authority of the person pronouncing it." (*Hist. of the Law, v.* 3, *p.* 150.)

Great obscurity prevails with regard to the persons who reported the decisions which are to be found in the year-books. The commonly received opinion is, that certain officers of the Court were employed for this purpose, an opinion sanctioned by C. B. Gilbert: "William the Conqueror," he observes, "to make the Norman tongue current, ordained that the pleadings in the Courts of Justice should be in French, and afterwards they were entered on record by the Prothonotary in Latin, that being a dead language and subject to no variation; the French continued till Hilary, 36 Ed. 3; then, by the statute 36 Ed. 3. c. 15, it was abolished, but the pleadings continued to be in Latin, but the Prothonotaries being used to

make notes in French, still continued the old way, it being a language much shorter and more expeditious to take notes; *of these are composed the Year-books.*" (*Gilb. Hist. of the Common Pleas, p.* 46.) Sir William Blackstone gives a similar account, informing us that the reports "were taken by the Prothonotaries or chief Scribes of the Court, at the expense of the Crown, and published annually, whence they are known under the denomination of the year-books." (*Comment. v.* i. *p.* 72.) "The most ancient compilations of this sort," says Mr. Douglas, "were the work of persons specially appointed for the purpose. In what particular manner they exercised their function, how far the Courts superintended, or the Judges assisted or revised their labours, no where appears, and indeed every thing relating to them is involved in so much obscurity, that I believe their very names are unknown." (*Pref. to Douglas's Rep. p.* ii.) This does not appear to be quite correct. In the preface to the first volume of the last edition of the year-book, (sometimes called Maynard's Edward II.) it is stated that "Mr. Selden, to whom knowledge of this kind was familiar, doth, out of a copy which he used, give us the name of the compiler of this work, to wit, Richard de Winchedon, who lived in the times in which the cases here reported were adjudged." The passage in Selden may be found in his Disser-

tation annexed to Fleta, and is as follows:—"What we have related concerning the use of the Imperial Law, in the above age, is likewise confirmed by what occurs in the Law Annals of King Edward II. most beautifully transcribed from the manuscript of Richard de Winchedon, who lived at that time, *and was in all appearance the first compiler of them.*" (*Dissertation, p.* 211 *of the Translation.*) Again, in the year-books, at the end of one of the terms, we find the following passage, "*Icy finessent les Reports de M Horewoode.*" It appears also that in Dyer's time there were a number of manuscript reports extant, which, as Mr. Vaillant tells us, (*see his Preface to Dyer's Reports,*) were well known at that time by the names of Tanfield, Warberton, Harper, Turner, Randal, Mason, and Rhodes. It is probable that some of these persons were the *Annalists*, or compilers of the year-books.

With regard to the number of these official reporters they are supposed by Plowden to have been four, who received an annual stipend from the King. (*Preface to Plowden's Rep. p.* iv.)

There is some doubt as to the period when the official reporters discontinued their labours. The cases in the year-books extend to the 28 Hen. 8; but Sir Edward Coke, in the preface to 3 Rep. says: "to return again to those grave and learned reporters of the laws in former times, who (as I

take it) about the end of the reign of K. Hen. 7, ceased, between which, and the cases reported in the reign of Hen. 8, you may observe no small difference: so as about the end of the reign of Henry 7, it was thought by the sages of the law that at that time the reports of the law were sufficient, &c." Mr. Douglas places the discontinuance of official reports at the beginning of the reign of Henry VIII. (*Preface to Rep. p.* iii.) and in the preface to 5 Mod. (p. vi.) we meet with the following remarks. "After the first 12 years of Henry VIII. this method was discontinued. It is true there are some cases from that time to the twenty-seventh year of Henry VIII. which are bound up with the year-books; but Mr. Fleetwood tells us they are collected with so little judgment that he did not think them worthy to be placed in the Tables which he made of those books, and therefore composed a table of them by itself."

It would be too long and difficult a task to enter, in this place, into an examination of the style of reporting adopted in the year-books, or into the character of the reports themselves. For information on this subject the reader is referred to Sir M. Hale's History of the Common Law, (p. 165, &c.) and to Mr. Reeves's History. (*vol.* ii. *p.* 357, *vol.* iii. *p.* 147, 254, *vol.* iv. *p.* 185.)

It may be remarked, that the study of the year-books was only abandoned in the course

of the last century. Lord Mansfield observed, that when he was young, few persons would confess that they had not read a considerable part at least of the year-books; but that at the time at which he was speaking, few would pretend to more than an occasional recourse to them in very particular cases. (*See Butler's Reminiscences, p.* 134.) At the present day, indeed, the very perusal of the year-books is attended with difficulty; and even when they are intelligible, they are often comparatively useless as authorities, from the circumstance of the Judges and Counsel not being distinguished from one another; a fault noticed by Dugdale, (*see Preface to Orig. Jurid.*) who, probably for the purpose of supplying this deficiency, compiled a short tract which Bishop Nicolson cites as still existing in MS. in the Ashmolean Museum, entitled, *Some Observations upon sundry Persons learned in the Law, extracted from the Year-books.* (*See Nicolson's Eng. Hist. Lib. p.* 236.)

Upon the conclusion of the year-books, a considerable period elapsed before the appearance of any new Reports. "About the end of the reign of Henry VII." says Sir Edward Coke, "it was thought by the sages of the law, that at that time, the Reports of the Law were sufficient; wherefore it may seem both unnecessary and unprofitable to have any more Reports of the Law:

but the same causes which moved the former, do require to have some more added unto them, &c." (*Preface to* 3 *Rep.* xvi. *b*) The first Collection of Reports after the Year-Books was that of Plowden, who commenced the study of the law, when twenty years of age, in the thirtieth year of Henry VIII. These Reports were originally compiled for the author's private use; but having resolved to make them public, he expended infinite pains in rendering them correct. They only contained points of law, determined upon demurrers, or special arguments, and they were for the most part revised by the Judges, whose opinions they delivered. They have, therefore, always been deservedly esteemed of the highest authority.

In the year 1585, appeared the Reports of Sir James Dyer, which were published by his executors, "being assailed," as they inform us, "by men of good countenance for that purpose." In fact, these Reports were only a collection of notes, which this eminent Judge had made for his own use, and which he would, doubtless, have rendered much more full and valuable, had he intended them for publication. However, this work has always been held in high estimation, and has been declared by Sir E. Coke to be "less painful, but not less profitable, than more elaborate works."

The next Collection of Cases which appeared, was that of Mr. Keilway, in which many Re-

ports of the time of Henry VII. and Henry VIII. are to be found, not reported in the Year-Books. They were given to the world by Sergeant Croke, (the eldest brother of the reporter Croke,) afterwards created a Judge. In the same year appeared the first volume of Sir Edward Coke's Reports.

In the history of our Law Reports, the labours of Sir Edward Coke, to which κατ' εξοχην the title of "THE Reports," has been given, claim a more especial notice. Upon the termination of the labours of those official reporters who compiled the Year Books, it appears that the practice of reporting had begun to fall into disuse, and, with the exception of Dyer and Plowden, no Collection of Cases of any importance had appeared between the period when the Year-Books terminated and the commencement of Coke's Reports. "I have," (says he, in the Preface to his first Reports,) "since the 22d year of her Majesty's reign, which is now twenty years complete, observed the true reasons, as near as I could, of such matters in law, wherein I was counsel, and acquainted with the state of the case, as have been adjudged upon mature deliberation." This, indeed, is the distinguishing characteristic of Sir Edward Coke's Reports; they are cases "adjudged upon mature deliberation," and remarkable for the full and complete arguments which

they underwent, both at the bar and on the bench; it is even stated, that one of the cases was argued *twenty-one* times. (*Butler and Baker's Case*, 3 *Rep.* 35, *b.*) They assume a character of more importance, when it is considered that they comprise the decisions of our courts of justice at a period when the law was, as it may be said, in a state of *transition*, when the *jus antiquum* was expiring and the *jus novum* about to commence. In the opinion of one eminently calculated to pass such a judgment, Coke performed almost a vital service to the system of our law by the publication of his Reports. "Of this I say no more," observes Lord Bacon, in his Proposal for amending the Laws of England, "but that, (to give every man his due,) had it not been for Sir Edward Coke's Reports, (which, though they may have errors, and some peremptory and extra-judicial resolutions more than warranted, yet they contain infinite good decisions and ruling over of cases,) the law by this time had been almost a ship without ballast; for that the cases of modern experience, are fled from those that are adjudged and ruled in former time." It appears that certain passages in the Reports had excited the King's displeasure, and on Coke's disgrace, he was commanded, "that, during this vacation, whilst he had time to live privately, and dispose himself at home, he take into his consi-

deration and revise his books of Reports, wherein, as his Majesty is informed, be many extravagant and exorbitant opinions set down and published for practice and good law. And if, in revising and reading thereof, he find any thing fit to be altered and amended, the correction is left to his own discretion. Amongst other things, the King was not well pleased with the title of these books, wherein he styled himself Lord Chief Justice of England, whereas he could challenge no more than Lord Chief Justice of the King's Bench." The King had been informed that the Reports contained many things against his Majesty's prerogative, and Sir Edward Coke was accordingly, as we learn from a letter of Lord Ellesmere, then Chancellor, called upon for an explanation of those passages. "According to your Majesty's directions, signified to me by Mr. Solicitor, I called the Lord Chief Justice before me, on Thursday, the 13th instant, in presence of Mr. Attorney, and others of your learned Counsel. I did let him know your Majesty's acceptance of the few animadversions, which, upon review of his own labours, he had sent, though fewer than you had expected, and his excuses other than you expected." It was, probably, upon this occasion that Lord Ellesmere wrote his "Observations on Lord Coke's Reports," which were printed several years ago, from the papers of Mr. Laugh-

ton, of Cambridge, and of which some MS. copies are to be found in the Hargrave Collection, (Nos. 78 and 254.) This inquiry does not appear to have been made with the concurrence of Lord Ellesmere, for Bacon tells us, that the Lord Chancellor wished he might have been spared all service concerning the Chief Justice, as remembering the fifth petition of *Demitte nobis debita nostra, &c.* A Committee of Judges was appointed to examine the Reports, but the matter slept until the Great Seal was delivered to Bacon, by whom it was removed, and two more Judges appointed on the Committee.

It seems, however, that the earlier parts of Coke's Reports met with the King's approbation, for, in the Preface to 4 Report, Sir Edward says, "His Majesty understanding, (as it seemeth,) by reason of my former editions, that I have observed many determinations and judgments of questionable and doubtful cases, which, upon great study, consideration, conference, and deliberation, have been resolved and given by the reverend Judges and Fathers of the Law, *required me to proceed*, and for the general good and quiet of the subject, to publish them."

The first eleven parts of the Reports, being all which appeared in the author's life-time, were published at various periods between the years 1600 and 1615. The Twelfth Part has a certi-

ficate printed before it, signed E. Bulstrode, 1655, attesting its genuineness. The Thirteenth Part was published again at a subsequent period. These two parts contain many highly curious cases of a constitutional nature, which was obviously the reason of their suppression during the life-time of the author.

How far Coke extended the license of a reporter in adding to and illustrating the arguments of the Counsel and the Judges, it is difficult to determine; he has, however, himself adverted to the limits which he thought a Reporter bound to observe. "And now that I have taken upon me to make a report of their arguments, I ought to do the same as fully and truly and sincerely as possibly I can, howbeit, seeing that almost every Judge had, in the course of his arguments, a peculiar method, and I must only hold myself to one, I shall give no just offence to any of them, if I challenge that which of right is due to every Reporter, that is, to reduce the sum and effect of all to such a method as, upon consideration had of all the arguments, the Reporter himself thinketh to be fittest and clearest for the right understanding of the true reasons and causes of their judgment, and resolution of the case in question." (*Calvin's Case, 7 Rep. 4 a.*) In one respect the Reports of Sir Edward Coke are greatly superior to those of his contemporaries, and most espe-

cially to those of succeeding Reporters. Every case is of weight and importance, or as he expresses himself, his labour has been, "that such only as should hereafter be leading cases for the public quiet might be imprinted and published." (*Preface to 9 Rep.* xv. *See also the Preface to 10 Rep.* xii.)

For several years after the publication of the first volume of Sir Edward Coke's Reports no similar work appeared, although, as Coke himself informs us, "he encouraged the lawyers of that age to follow his example, to register in books the sayings and doings which were in their time worthy of note and observation." Sir Henry Hobart, indeed, his successor on the bench of the Common Pleas, left, on his death, a valuable collection of MS. Reports of cases adjudged in that Court, which, several years afterwards, were given to the world. They were subsequently edited by Sir Heneage Finch, who declared that he found them "beautiful, even in confusion." Although many of the cases relate to obsolete law, Hobart's Reports must always be regarded as most valuable, for the accurate and lucid expositions of the law which they contain.

In consequence, probably, of the paucity of reports in the reign of James I. (that is to say, of *published* reports, for many MS. collections were made during that reign, which have been since com-

mitted to the press,) it was thought expedient to revive the office of stipendiary reporters, which, as we have seen, had been discontinued about the conclusion of the reign of Henry VII. This idea appears to have been projected by Lord Bacon, who, in his "Proposal for amending the Laws of England," recommended the King "to appoint some grave and sound lawyers, with some honourable stipend, to be reporters for the time to come." (*Bacon's Law Tracts, p.* 12.) And in a note upon this passage the author adds: "This constitution of reporters I obtained of the King after I was Chancellor, and there are two appointed with 100l. a year a-piece stipend." (*See also Pat.* 15 *Jac. p.* 18. 17 *Rym.* 26.) "This wise institution," says Sir William Blackstone, "was soon neglected;" (1 *Com. p.* 72,) and indeed there seems reason to doubt whether the new reporters ever entered upon their task. We learn from the title-page to his Reports, that Sir Thomas Hetley was one of the persons "appointed by the King and Judges for one of the Reporters of the Law," but there is certainly nothing in his Reports to authorise the idea that they were collected with that particular judgment and care which should distinguish the labours of an official reporter. Moreover, they were "taken in the third, fourth, fifth, sixth, and seventh years of the late King Charles," a considerable time after the period when the new appointment of official

reporters took place. This, in addition to the circumstance that many of Hetley's cases are only a translation of those in Littleton's Reports, seems sufficient to prove that Hetley's Reports are not entitled to any authority as official records. To what cause the failure of Lord Bacon's scheme is to be attributed is not known.

On the establishment of the Commonwealth, the reports began to multiply with rapidity. "A flying squadron of thin reports" appeared, of which March is said to have led the van. And although amongst them there were many books of good authority (*see the List, Preface to* 5 *Mod. p.* ix.) yet "the honoured and revered names of divers grave and learned Justices and Professors were, in some of the said books, abused and invocated, to patronage the indigested crudities of those plagiaries." (*Preface to Cro. Car.*) "Of late," says Bulstrode, (*Epistle Dedicatory to* 2 *Buls. Rep.*) "we have found so many wandering and masterless reports (like the soldiers of Cadmus) daily rising up and justling each other, that our learned Judges have been forced to provide against their multiplicity, by disallowing of some posthumous reports, well considering that as laws are the anchors of the Republic, so the reports are as the anchors of Laws, and therefore ought well to be *weighed* before put out." Some severe observations on these "flying reports" are also

made by Sir Harbottle Grimstone, in his Preface to Cro. Car. who tells us that, "they tend to the depraving the first grounds and reason of our students at the Common Law, and the young practitioners thereof, who by such false lights are misled, and thereby their clients' causes either delayed or miscarried, and multiplicity of law-suits rather cherished than suppressed."

The reports which have incurred this grave reprehension are chiefly collections of cases made by various Judges for their own use, and neither published by them nor intended for the press. "This I am sure of," says Style, in the Dedication to his Reports, "there is not a father alive to own many of them, and they speak so plain in the language of Ashdod, that a knowing man cannot believe they ever sprung from Israelitish parents." Indeed there seems reason to believe that the names of Judges and other learned men have been very unwarrantably made use of by the publishers of these masterless reports. During this period there were upwards of twenty of these volumes published.

The most signal exception to these "blind and mis-shapen reports" are the three volumes of Sir George Croke's Reports, which were first published in the year 1657, by Sir Harbottle Grimstone, and which have always been regarded as a work of high authority. Being published during the pe-

riod when the Ordinance of the Parliament, respecting the language of the law, was still in force, (of which some account has already been given, (*see ante, vol.* i. *p.* 5,) the editor was compelled, much against his will, to translate them into English. However, he still retained the consolation of printing them in black-letter, a circumstance which he seems to have considered essential to the authority of his book.*

Upon the Restoration a check was given to the indiscriminate printing of reports, by the Statute which prohibited the publication of law-books without the licence of certain of the Judges, (*See ante, vol.* i. *p.* 39.) The character of the reports published during the reign of Charles II. (amongst which we find Rolle, Leonard, T. Jones, and Vaughan, all of them very valuable books,) is certainly superior to that of the "flying squadron" which had immediately preceded them.

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* "There be certain legal formalities and ceremonies peculiarly appropriate and anciently continued amongst us, so as they seem now to be *essentials of the law itself*, and ought not, without the supreme authority, to be changed or disused. Such are those which are observed by our author in the creation of Sergeants at Law, &c. And such I conceive are the writing of the orders and records of the Courts in such peculiar hands, the printing of law-books *in their proper letter* and native language." (*Note to Pref. to Cro. Car.*)

In the reign of James II. only seven volumes of reports made their appearance; but amongst them were those of Sir Edmund Saunders, a work which, however excellent in itself, has been rendered doubly valuable by the learned and judicious annotations of Mr. Sergeant Williams. The Reports of Saunders (of which a new edition has lately appeared, with many additional notes, inserted with great accuracy and judgment,) will always be regarded by the learned Pleader as the best manual to which he can resort. The facility of reference to this book is greatly increased by the excellent and copious index which is added in the last edition.

It is singular that so considerable a portion of the last century should have elapsed before the periodical publication of reports took place. Notwithstanding the desire felt and expressed by the profession, many of the Reports of that æra were not published until after their authors' death, as in the case of Lord Raymond and Sir John Strange. "Late cases," says Sir James Burrow, in his preface, "are most sought after;" and, indeed, the possessors of such in MS. appear to have been much harassed by the importunity of their friends. "I was subject," says Burrow, "to continual interruption, and even persecution, by incessant applications for searches into my notes; for transcript of them; sometimes for the note-

books themselves, (not always returned without trouble and solicitation,) not to mention frequent conversations upon very dry and unentertaining subjects which my consulters were *paid* for considering, but I had no sort of concern in. This inconvenience grew from bad to worse, till it became quite insupportable,"—and Sir James published.—When a person at this period formed a design of becoming a reporter, with a view to the publication of his notes, he waited until he had collected cases sufficient to fill a volume, which he then presented to the profession. The latest collection of cases published in this manner was that of Mr. Douglas, including the decisions of the Court of King's Bench for three years, from 1778 to 1781.

At length, in the year 1786, Messrs Durnford and East, "in consequence of the desire universally felt for a periodical work of this nature," adopted the plan "of publishing the notes of cases adjudged in the Court of King's Bench within a short time after each term." The success which attended the publication of the Term Reports soon rendered the system fashionable, and instead of the inconvenience which was felt in Sir James Burrow's time, we are now absolutely overwhelmed with periodical Reports. The various reporters in the different Courts, during the reign of George the Third, amount to upwards of

sixty, and their numbers appear to be rapidly increasing. In the King's Bench, in the Common Pleas, and in the Exchequer, we have a double series of reports—and where is the grievance to terminate? Already the volumes of the Reports amount to upwards of 500, and in half a century that number will be doubled. The happy time is long gone by when, according to Fuller, "all the writers of the Commou Law, with all the year-books belonging thereto, might be bought for three score pounds or thereabouts," for now the library of a modern lawyer requires a serious investment of capital. Yet in what manner is the evil to be remedied? The question is a difficult one, and we do not pretend to offer a solution of it.

To the present mode of recording the decisions of our Courts, many weighty objections may undoubtedly be taken. The task is confided to the hands of private individuals, whose capacity for the performance of it is subject to no previous inquiry, to no subsequent sanction. The method of reporting is dependent entirely upon the taste and ability of the reporter, who compresses or enlarges his cases according to his own convenience, or that of his publisher. He is negligent or faithful, pithy or diffuse, as his talents, his fancy, or his interest dictate, and the practiser is sometimes left to gather the opinion of the Court, as best he

may, from the relation of a man who evidently did not understand that opinion.

The consequences of this desultory and irregular system of reporting are highly injurious. The authority of a decision is made to depend upon the character of the reporter, with regard to which the learned Judges are by no means always of the same opinion. Lord Thurlow tells us that "Carthew and Comberbach are equally bad authority." (1 *Br. Ch. Ca.* 97.) While Lord Kenyon, on the other hand, informs us that "Carthew is in general a good Reporter."* (2 *T. R.* 776.) There are few reporters who have altogether escaped censure from the Bench. "Eighth Modern is a miserably bad book." (1 *Burr.* 386.) "11th Modern is a book of no authority." (*Dougl.* 61.) "12th Modern is not a book of any authority." (*Dougl.* 83.) "The book called Reports in Chancery in Lord Nottingham's time, is a book of no authority." (3 *Atk.* 334, 1 *Wils.* 162) "Fitzgibbon's Reports is a book of no authority." (3 *Atk.* 610.) "Some of the cases in Freeman are well reported, but the book is of no authority." (*Cowp.* 15.) "Keble is a bad Reporter." (3 *T. R.* 17.) "a very inaccurate Reporter" (3 *Wils.* 330.) "The authority of Popham is none." (1

* Mr. Selwyn, also, in his N.P. speaks of the "known accuracy" of Carthew.

Keb. 676.) "As for the case from Noy's Reports I wholly reject that authority. It was but an Abridgment of cases by Sergt. Size, who, when he was a student, borrowed Noy's Reports, and abridged them for his own use." (*per Twisden J.* 1 *Vent.* 81.) Lord Mansfield has denounced several Reporters. He absolutely forbade the reading of Moseley's Reports. (5 *Burr.* 2629—3 *Anstr.* 861.) Of Bunbury he said, "Mr. Bunbury never meant those cases should have been published. They are very loose notes." (5 *Burr.* 2658.) So he forbade the citing of Barnardiston's Reports in Chancery, as it would only be misleading students to put them upon reading them. "He said it was marvellous, however, to such as knew the Sergeant and his manner of taking notes, that he should so often stumble on what was right, and yet there was not *one* case in his book which was so throughout." (2 *Burr.* 1142.) Sometimes the Courts are compelled to take two bad reporters instead of one good one. "The case cited," says Lord Mansfield, "is an express authority, and is reported in two books, each of which states the case in the same way. It is, however, objected that these are books of no authority; but if both the reporters were the worst that ever reported, if they substantially reported a case in the same way, it is demonstration of the truth of what they report, or they could not agree."

(*R.* v. *Genge*, *Cowp.* 16.) The objections to such loose and irregular reports apply with double force to the reports of Nisi Prius decisions, where the matter of the case is often as objectionable as the manner in which it is reported. "Very likely," says Mr. Justice Bayley, "one's first thoughts at Nisi Prius may be wrong, and I am extremely sorry that they are ever reported, and still more so that they are ever mentioned again, at least so far as my nisi prius decisions are concerned, because I think they are entitled to very little weight. What is said by a Judge upon a trial is merely the first impression of his mind on a point coming suddenly before him, and which he had no opportunity of considering before hand." (*Doe* v. *Staunton*, 1 *Ch. R.* 121.)

"It has somehow or other happened," says Mr. Douglas, in the Preface to his Reports, "that little or no care has been taken, nor any provisions made, to render the evidence of judicial proceedings certain and authentic." Amongst the many evils of the law noticed by Lord Bacon, as calling for amendment, is the state of the Reports, even in his time. "Lastly," he observes, "cases reported with too great prolixity would be drawn into a more compendious report, not in the nature of an abridgment, but tautologies and impertinencies to be cut off; as for misprinting and insensible reporting, which many times confound the

students, that will be *obiter* amended; but more principally if there be anything in the report which is not well warranted by the record, that is also to be rectified." (*Law Tracts, p.* 11.) Bacon, therefore, contemplated an improved collection of all the reports then published, and as a means to ensure the judicious recording of future decisions, we have seen that he projected the re-establishment of the official reporters. The latter plan has been frequently recommended, and has, we understand, been adopted with success in some of the United States.* But whether upon the whole such an establishment be desirable may, perhaps, be doubted. The persons upon whom the office is conferred, receiving their appointment from government, might possibly be inclined to consider themselves independent of the pro-

* The Americans are in as great a dilemma as ourselves with regard to the rapid increase of their law-reports. "We had no reports," says an American writer, "until Pennsylvania set the example, in the year 1790, in the reports of Alexander James Dallas, esq. From that time until 1803, there were only a few books of reports published; but from that period to the present, the catalogue has been increasing almost monthly." (*Hoffman's Course of Legal Study, p.* 147.) The same writer gives a catalogue of the American Reports, up to the period when he wrote, which we find amount to about a hundred volumes, in the course of less than a quarter of a century!

fession, whose praise or censure they might equally disregard. Nor, indeed, would it be well to throw any additional patronage into the power of the crown, which already possesses temptations sufficient to corrupt the integrity of the Bar. Perhaps, therefore, it might be most advisable that certain gentlemen of the Bar should be selected and countenanced by the profession at large, whose sanction should be given to their labours, and to theirs alone. By this mode all the advantages attendant on the establishment of official reporters would be gained, and the evils for the most part avoided. Should the present system be suffered to continue, we can anticipate no other fate than that which Mr. Viner contemplated when he regarded his ponderous Abridgment—"like the Tarpeian maid, to be oppressed with our own volumes, as she was with the Helmets of the Sabines."

SALARIES OF THE JUDGES.

Although it is difficult to form a correct idea of the professional emoluments of our early lawyers, (*see post, p. 73,*) we have ample means of ascertaining the salaries of the judges in early times, from the Records of the Exchequer. These Records were diligently searched by Sir W. Dugdale, who gives us the following information on the subject.

"Touching the yearly salaries paid to the King's justices of his respective courts at Westminster, for their support in his service, I have not seen any thing before the xith year of King Henry the Third's reign. The Liberatæ Rolls before that time being all perisht, but then Will. de Insula and R. Duket had each of them x marks per ann. out of the Exchequer.

"Howbeit, not long after, these fees were increast, for in 23 Hen. III. Will. de Culeworth, one of the justices of the Common Pleas, had xxl. per ann. fee.

"In 27 Henry III. Alexander de Severeford, a baron of the Exchequer, (and chief as it should seem,) had xl marks per annum, and in 38 of Hen. III. John de Longville, one of the barons of that court, xx marks.

"In 43 Henry III. Gilbert de Preston, then one of the justices of the King's Bench, had xl. *l.* per ann. and in 44 Hen. III. Roger de Thurkilby, one of the justices of the Court of Common Pleas, c. marks per ann. But he was then chief justice in that court, as I guess, though there was a Justiciarius Angliæ at the same time, (as in my Chronologick Tables is evident,) for Robert de Rivers, then also a justice in the said Court of Common Pleas, had no more than xl. *l.* per annum.

"To Roger de Thurkilby, (for he died in 44

Hen. III.) succeeded Will. de Wilton in the chief justiceship of the Court of Common Pleas, whose fee was advanced to c *l.* per annum; the fee of the other judges in that Court but xl. *l.* apiece.

"And as the salaries in this Court were thus enlarged, so were those in the Exchequer: for in 49 Hen. III. Roger de la Laye, one of the barons there, has xl. *l.* per annum. But this held not long, for Gilbert de Preston, chief justice of the King's Bench, in 35 Hen. III, received but a c marks per annum. Nor had he more in the beginning of King Edward the First's time, when he was chief justice of the Court of Common Pleas. And after this, they sunk more, for Thomas de Weyland, chief justice of the Common Pleas, in 7 Edward I. had but xl. *l.* per annum, as long as he lived; and Walter de Wymburne, another justice of the same Court, xl. marks, which proportion, viz. xl. *l.* per annum to the chief justices of both Benches, and xl. marks apiece to the justices, and barons of the Exchequer, continued till the 25 of Edward III. as may appear by the Liberatæ Rolls of those times. And then the salary of the chief justice of the King's Bench shrunk more: viz. to fifty marks per annum, (which is not more than 33l. 6s. 6d.) the yearly fee of the chief justice of the Common Pleas being augmented to c marks per annum;

and the other justices of both Benches and barons of the Exchequer, being then reduced to xx*l.* per annum.

"Neither in these annual salaries have I seen any direct certainty of a long time after, for in 28 Edw. III. it appears, that Thomas de Seton, then one of the justices of the King's Bench, had 30 marks per annum.

"In 36 Edw. III. the chief baron, and other barons of the Exchequer, had all alike, viz. xl. *l.* per annum. In 39 Edw. III. the justices of the Common Pleas, xl. *l.* per annum. The chief justice of the King's Bench, c marks. The other justices of that Court, xl. *l.* per annum.

"In 5 Rich. II. the justices of the Common Pleas, no more than xl marks per annum. So also in 8 and 14 Richard II.

"In 1 H. IV. the chief baron, and other the barons of the Exchequer, but xl marks per annum. The chief justice of the Common Pleas, xl. *l.* the other justices of that Court, xl marks. In 3 H. IV. the chief justice of the King's Bench, xl. *l.* per annum. And in 9 H. IV. John Colepeper, one of the justices of the Common Pleas, lv marks per annum.

"But I do incline to believe, that there was more of certainty, both in their yearly salaries, and allowances for their robes, after the 18th year of King Henry the Sixth's reign, in which

year, as well the judges of all the courts of Westminster, King's Attorney and King's Sergeants, exhibited a petition in parliament, a copy whereof I have here added."

Dugdale then gives the petition, and the returns of the revenue officers, as to the amount of the judges' fees and salaries, and then continues thus:

"So that, after this they had, (as it seemeth,) an increase of their salaries; and likewise an allowance in money for their robes: for it appeareth, that, in 1 Edw. IV. John Markham, then chief justice of the King's Bench, had an yearly pension of clxx. marks granted unto him, and payable by the Clerk of the Hanaper, as also cvis. xid. qu. and sixth part of an halfpenny, for his Christmas robe, and lxvis. vid. for his robe at Whitsuntide, *juxta formam cujusdam actûs in Parliamento an.* 18 H. VI. as are the words of the Record.

"So likewise Sir Will. Huse, Knt. constituted chief justice of the same court in 1 H. VII. had the yearly fee of cxl marks for his better support in that place, granted to him; and cvis. xid. farthing, and the sixth part of an halfpenny, for his winter robe; as also lxvis. vid. for his robe at Whitsuntide.

"After this, viz. in 37 H. VIII. there was a farther increase of their fees, viz. to the lord

chief justice of the King's Bench and his successors, for the time being, of xxxl. per annum. And to every justice of the Common Pleas, and their successors, xx. l. per annum, 17 Nov. 37 Henry VIII." (*Dugdale's Orig. Jurid. p.* 104.)

It should be remembered, that at this early period the duties of the judges were much lighter than at present. "You are to know further," says Fortescue, "that the judges of England do not sit in the King's Courts above three hours in the day, that is, from eight in the morning until eleven. The Courts are not open in the afternoon. The suitors of the court betake themselves to the *Pervise* and other places, to advise with the sergeants at law and other their counsel, about their affairs. The judges, when they have taken their refreshments, spend the rest of the day in the study of the Laws, reading the Holy Scriptures, and other innocent amusements at their pleasure. It seems rather a life of contemplation than of much action. Their time is spent in this manner, free from care and worldly avocations." (*De Laudibus, &c. c.* 51.) The Lord Chancellor's place, however, was by no means so easy a one, as the following account of the manner in which Lord Keeper Williams used to distribute his time, will sufficiently testify. "It is almost incredible what a perfect drudge the Keeper was, especially when he first entered upon his office. * * * His busi-

ness at this time was so great, that he was forced to sit by candle-light in the Court two hours before day, and to remain there till between eight and nine, then to repair to his office in the House of Lords till twelve or one every day. After a short repast at home, he returned to hear the causes in Chancery, which he could not dispatch in the morning; or if he attended at council at Whitehall, he came back towards evening, and followed his employment in Chancery till eight at night, or later. After this, when he came home, he perused what papers his secretaries brought to him, and when that was done, though late in the night, he prepared himself for the Lords' House next morning. And all that lived in his family knew, that it was ordinary with him to begin his studies at six at night, and continue them till three in the morning, and be ready again by seven to attend his employment." (*Philips's Life of Williams, p.* 80.)

"Pray, Mr. ———," said his Lordship, "are you concerned for the prosecutor?" "No, my Lord, I am employed for the prosecutor; but I am concerned for the prisoner."

SIR JULIUS CÆSAR.

"Sir JULIUS CÆSAR, Knight, was born in this county, his father having a house nigh unto Tottenham. His father was a Doctor of Physick to Queen Elizabeth, and descended from the ancient family of the *Dalmarii*, in Italy. This, his son, was bred in Oxford; and, after other intermediate preferments, was advanced Chancelour of the dutchy of Lancaster, and sworn a Privie Counsellor, on Sunday, the sixth of July, 1607, and afterwards was preferred Master of the Rouls.

"A person of prodigious bounty to all of worth or want, so that he might seem to be *Almoner* General of the Nation. The story is well known of a gentleman, who once borrowing his coach (which was as well known to poor people as any hospital in England,) was so *rendevouzed* about with beggars, in London, that it cost him all the money in his purse to satisfy their importunity; so that he might have hired *twenty* coaches on the same terms. Sir Francis Bacon, Lord Verulam, was *judicious* in his *election*, when, perceiving his dissolution to approach, he made his *last bed* in effect in the house of Sir Julius.

"He continued more than 20 years Master of the Rolles; and, though heaved at by some expectants, sate still in his place, well poyzed therein with his gravity and integrity. *Vir tantarum*

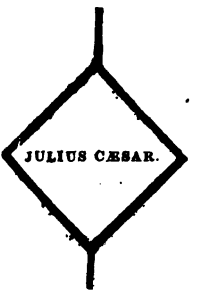
Elemosynarum non movebitur, 'a man of so great *alms* and prayers (made by him and for him) shall not be removed.' Nor was it without a prosperous omen, that his chief house in Hartfordshire was called *Benington*, that is, *Villa benigna*, 'the *bountiful Village*,' as one author will have it; or, as another, *Villa beneficii*, 'The Town of *Good Turns*,' from the river so named, running by it. What shall I speak of his Arms, viz. Gules, three roses, Argent: on a chief of the first, so many roses of the second, embleming the *fragrancy of the memory* he hath left behind him.

"His Monument, in Great St. Helen's, London, being out of the road of ordinary fancies, was thus designed by himself.

"The ensuing description is contrived in *form* of a Deed, and imitateth *ruffled Parchment*, in allusion to his *Office*, as Master of the *Rolles*:—

"*Omnibus Christi Fidelibus ad quos hoc præsens Scriptum pervenerit. Sciatis, me Julium Dalmare, alias Cæsarem, Militem; utriusque Doctorem; Elizabethæ Reginæ Supremæ Curiæ Admiralitatis Judicem; et unum e Magistris Libellorum, Jacobo Regi à Privatis Concilliis, Cancellarium Scaccarii, Scriniorum Magistrum, hac præsenti Charta meo confirmasse me, annuente Divino Numine, Naturæ debitum libenter solviturum, quamprimum Deo placuerit. In cujus rei memo-*

riam manum meam et Sigillum apposui Datum 27 Februarii, 1635.



"Here his *seal* or *Coat of Arms* is affixed, and beneath them is written

"*Irrotulatur Cœlo.*"

"He dyed the twenty-eighth day of April, anno Domini 1636, in the seventy-ninth year of his age." (*Fuller's Worthies—Middlesex.*)

The following anecdote of Sir Julius is told by Clarendon, in his History of the Rebellion.

"There was a very ridiculous story at that time in the mouths of many, which, being a known truth, may not be unfitly mentioned in this place, as a kind of illustration of the humour and nature of the man.* Sir *Julius Cæsar* was then Master

* The Lord Treasurer Weston, Earl of Portland.

of the Rolls, and had, inherent in his office, the indubitable right and disposition of the Six Clerks' places; all which he had, for many years, upon any vacancy, bestowed to such persons as he thought fit. One of those places was become void, and designed by the old man to his son, Robert Cæsar, a lawyer of a good name, and exceedingly beloved. The Lord Treasurer, (as he was vigilant in such cases,) had notice of the clerk's expiration so soon, that he procured the King to send a messenger to the Master of the Rolls, expressly forbidding him to dispose of that Six Clerks' place, till his Majesty's pleasure should be further made known to him. It was the first command of that kind that had been heard of, and was felt by the old man very sensibly. He was, indeed, very old, and had outlived most of his friends; so that his age was an objection against him; many persons of quality being dead, who had, for recompence of services, procured the reversion of his office. The Treasurer found it no hard matter so far to terrify him, that (for the King's service, as was pretended,) he admitted for a Six Clerk a person recommended by him, (Mr. Fern, a dependent upon him,) who paid six thousand pounds ready money; which, poor man! he lived to repent in a jail. This work being done at the charge of the poor old man, who had been a Privy Counsellor from the en-

trance of King James, had been Chancellor of the Exchequer, and served in other offices; the depriving him of his right made a great noise; and the condition of his son (his father being not likely to live to have the disposal of another office in his power) who, as was said before, was generally beloved and esteemed, was argument of great compassion; and was lively and successfully represented to the king himself; who was graciously pleased to promise, that, if the old man chanced to die before any other of the Six Clerks, that office, when it should fall, should be conferred on his son, whosoever should succeed him as Master of the Rolls: which might well be provided for, and the Lord Treasurer obliged himself (to expiate the injury,) to procure some declaration to that purpose, under his Majesty's Sign Manual; which, however easy to be done, he long forgot, or neglected.

One day the Earl of Tullibardine, who was nearly allied to Mr. Cæsar, and much his friend, being with the Treasurer, passionately asked him, whether he had done that business? To whom he answered, with a seeming trouble, "That he had forgotten it, for which he was heartily sorry; and if he would give him a little note in writing, for a memorial, he would put it amongst those which he would dispatch with the King that afternoon." The Earl presently writ on a little paper,

Remember Cæsar! and gave it to him; and he put it into that little pocket, where, he said, he kept all his memorials which were first to be transacted.

Many days passed, and Cæsar never thought of. At length, when he changed his clothes, and he who waited on him in his chamber, according to custom, brought him all the notes and papers which were left in those he had left off, which he then commonly perused; when he found this little billet, in which was only written, *Remember Cæsar!* and which he had never read before, he was exceedingly confounded, and knew not what to make, or think of it. He sent for his bosom friends, with whom he most confidently consulted, and shewed the paper to them, the contents whereof he could not conceive: but that it might probably have been put into his hands, (because it was found in that inclosure wherein he put all things of moment which were given him when he was in motion, and in the privy lodgings in the court.) After a serious and melancholy deliberation, it was agreed, that it was the advertisement from some friend, who durst not own the discovery: that it could signify nothing but that there was a conspiracy against his life, by his many and mighty enemies: and they all knew Cæsar's fate, by contemning or neglecting such animadversions. And therefore they concluded

that he should pretend to be indisposed, that he might not stir abroad all that day; nor that any might be admitted to him, but persons of undoubted affections: that at night, the gates should be shut early, and the porter enjoined to open them to nobody, nor to go himself to bed till the *morning*; and that some servants should watch with him, lest violence might be used at the gate; and that they themselves, *and some other gentlemen*, will sit up all the night, and attend the event. Such houses are always in the morning haunted by early suitors; but it was very late before any could now get admittance into the house, the porter having quitted some of that arrear of sleep which he owed to himself for his night's watching, which he excused to his acquaintance, by whispering to them, "That his Lord should have been killed that night, which had kept all the house from going to bed." And shortly after, the Earl of Tullibardine asking him, whether he had remembered Cæsar? the Treasurer quickly recollected the ground of his perturbation, and could not forbear imparting it to his friends, who likewise affected the communication, and so the whole jest came to be discovered."

LORD CHANCELLOR SHAFTESBURY.

"Lord Chancellor Shaftesbury," says Mr. Seward, in his anecdotes, (*vol.* ii. *p.*58.) "was a man

of such talents and sagacity, that at twenty years of age, he carried a proposal of his own for settling the differences between the king (Charles I.) and his parliament to his majesty, who told him that he was a very young man for such an undertaking." "Sir," said he, "that will not be the worse for your affairs, provided I do the business." It met, however, with no success, nor would perhaps a proposal made by Machiavel himself have succeeded better, when the sword was once drawn.

"In the reign of Charles II. after having filled some great offices, he was appointed to that very dignified and illustrious one of Lord Chancellor, though he had never studied the law, and had never been called to the bar. On that account he used to preside in the Court of Chancery in a brown silk instead of a black silk gown. Dryden himself praises his conduct while he administered that great office, saying of him,—

"Yet fame deserved, no enemy can grudge,
The Statesman we abhor, but praise the Judge;
In Israel's Courts ne'er sat an Abethdin
With more discerning eyes, or hands more clean;
Unbribed, unsought, the wretched to redress,
Swift of dispatch, and easy of access."

"Yet in another place he calls him—

"For close designs and crooked counsels fit,
Sagacious, bold, and turbulent of wit;

Restless, unfix'd in principles and place,
In power unpleased, impatient of disgrace;
A fiery soul, which, working out its way,
Fretted the pigmy body to decay,
And o'er-inform'd the tenement of clay."

(*Absalom and Achitophel.*)

"The discrepancy in the two characters noticed by Mr. Seward is thus accounted for by Dr. Keppis, in his notes to the Biographia Britannica, 'It is well known with what severity the Earl of Shaftesbury's character is treated by Dryden in his Absalom and Achitophel. Nevertheless, soon after that fine satire appeared, his Lordship, having the nomination of a scholar, as Governor of the Charter-house, gave it to one of the Poet's sons, without any solicitation on the part of the father, or of any other person. This act of generosity had such an effect on Dryden that, to testify his gratitude, he added, in the second edition of the poem, the four lines in celebration of the Earl's conduct as Lord Chancellor:

'In Israel's Courts, &c.'

"When King Charles II. read these lines, he told Dryden that he had spoiled by them all which he had before said of Shaftesbury." (*See Article "Cooper, Ant. Ashley."*)

Lord Shaftesbury was the last layman raised to the dignity of the woolsack. In the reign of

James I. a singular resolution was entered into of excluding the common lawyers from this, the highest professional honour. "For my calling into this office (said Lord Keeper Williams, in his inaugural address,) it was, as most here present cannot but know, not the cause, but the effect of a resolution in the state to change or reduce the governor of this Court from a professor of our municipal laws to some one of the nobility, gentry, or clergy, of this kingdom." (*Hacket's Life of Williams, Part* i. *p.* 72.) In the preceding reign a disposition to the same proceeding had manifested itself. On the death of the Lord Chancellor Bromley, the Queen had resolved to appoint as his successor, the Earl of Rutland, a nobleman only in the thirtieth year of his age; but, on the Earl's sudden death, shortly after the decease of Bromley, Sir Christopher Hatton, her Majesty's Vice-Chamberlain, was appointed to the office. It is singular that the administration of the three Chancellors, who were not educated to the profession of the law, should have afforded so little cause of complaint to the suitors of the Court of Chancery. Hatton, indeed, had formerly been a member of one of the Inns of Court, but had never prosecuted his legal studies. Shaftesbury appears to have been a perfect stranger to the law. Perhaps, of the three, Williams was best fitted, by his previous studies, for the high situa-

tion to which he was raised. He had paid considerable attention, while Chaplain to Lord Ellesmere, by a happy anticipation, to the study of the common law, as we learn from the relation of his biographer. "The third step of felicity upon which he climbed ἐς κόλπον τῆς ψυχῆς, as it is Athanasius his metaphor, into the bosom of his master's soul, was that he had picked up in a short space, some gleanings, in his own modest words, in the knowledge of the Common Laws of the Realm; but, indeed, full sheaves, if his acquaintance may be believed. He remitted not the studies of his own science and profession; but, having read the Tenures, the Doctor and Student, and somewhat else like unto them, at hours of relaxation, he furnished himself with no little quantity of that learning, by discourse and conference, and enquiring after some cases how they sped in Courts of Justice. When he was at a nonplus, he respited that difficulty till he met with Sir John Walker, (afterwards Lord Chief Baron,) whose judgment was most agreeable to his genius. This was his practice, not now, but all along, to gather up more at the interspaces of leisure than others do at their study." (*Hacket's Life of Williams, Part* i. *p.* 27.)

THE REVELS OF THE INNS OF COURT.

The Revels or solemn dances which used for-

merly to take place at the Inns of Court, are a very perplexing subject of speculation. That the grave ministers and professors of the law should have conceived it to be consistent with their dignity to exhibit their persons in the mazes of a dance, seems altogether inexplicable. Let us just suppose that, under "The Mirror of Fashion," in the Morning Chronicle, we read the following paragraph:—"Yesterday, being the Feast of St. Erkenwald, the Honourable Society of the Middle Temple gave their usual entertainment. After dinner the Solemn Revels commenced, by the Lord Chancellor walking a minuet with Mr. Justice Gaselee, as the youngest Judge. A quadrille succeeded, in which the Judges of the King's Bench and Common Pleas were to have taken part, but, as Lord Chief Justice Best was severely afflicted with the gout, and as Mr. Justice Littledale was not yet perfect in the figure of the dance, their places were supplied from amongst the King's Counsel, Mr. Marryat and Mr. Hart being selected for that purpose. 'The Lancers' succeeded; the Justices of the C. P. (with the exception of the C. J.) and the Barons of the Exchequer making up the set. We were sorry to observe that Mr. Baron Graham seemed fatigued with the exertion. Some waltzing now took place, the couples being led by Mr. Attorney and Mr. Solicitor.—The grace and vigour displayed by Sir Charles Wether-

all in this dance excited universal admiration.—The Chancellor observed that he had seen nothing like it since Dunning's time. The Sergeants next advanced and danced several Scotch reels. Mr. Sergeant Vaughan distinguished himself particularly. The Solemn Revels being concluded, a gentleman of the Outer Bar (Mr. Charles Phillips) was called upon for a song.—He gave the favourite Air 'Oh I am the Boy for bewitching them,' with great effect. The Judges and Benchers being now seated, the Post Revels commenced with a country dance in which all the utter Barristers took part. Mr. Rose of the Chancery Bar observed that learned gentlemen seemed particularly expert at one part of the figure—change sides and back again. The whole concluded with a *Pas de deux* between the Vice-Chancellor and Lord Stowell."

The professors of Divinity and Medicine do not appear to have indulged at any period in these salutary recreations. The solemnity of the College of Physicians was never disturbed by a Coranto. It is possible that the practice may have crept into our Inns of Court from the circumstance of their being formerly a sort of University for the education of our young nobility, with whom the art of dancing was an essential accomplishment. Fortescue tells us that in the Inns of Court the Students were taught.

The Revels of the Inns of Court appear to

have been of two kinds, the *Solemn* Revels and the *Post* Revels. They principally took place on holidays and festivals, when the Inn was honoured with the presence of the Judges or other distinguished personages. When dinner was over, the Judges and Sergeants were conducted either into the garden or some other place, until the hall was "cleansed and prepared" for the solemnities. This being done, and the Judges being again seated, "the ancient of the two (pleaders,) who hath the staff in his hand, stands at the upper end of the bar-table; and the other, with the white rod, places himself at the cupboard, in the middle of the hall opposite to the Judges, where, the music being begun, he calleth twice the Master of the Revels; and at the second call, the ancient, with his white staff, advanceth forward, and begins to lead the measures, followed first by the barristers, and then the gentlemen under the bar, all according to their several antiquities; and when one measure is ended, the reader at the cupboard calls for another, and so in order." (*Dug. Orig. p.* 234.) At the conclusion of these, which were the *Solemn* Revels, a curious ceremony takes place, which is thus described by Dugdale.

"When the last measure is dancing, the reader at the cupboard calls to one of the gentlemen of the bar, as he is walking, or dancing with the

sent, to give the Judges a song: who forthwith begins the first line of any psalm, as he thinks fittest; after which, all the rest of the company follow, and sing with him. Whilst they are thus walking and singing, the reader with the white rod departs from the cupboard, and makes his choice of a competent number of utter barristers, and as many under the bar, whom he takes into the buttery; where there is delivered unto every barrister, a towel with wafers in it, and unto every gentleman under the bar, a wooden bowl, filled with ipocras, with which they march in order into the hall, the reader, with his white rod, going foremost. And when they come near to the half-pace, opposite to the Judges, the company divide themselves, one half (as well barristers as those under the bar,) standing on the one side of the reader, the other on the other side; and then, after a low solemn congee made, the gentlemen of the bar first carry the wafers; the rest, with the new reader, standing in their places. At their return, they all make one another solemn low congees, and then the gentlemen under the bar carry their bowls of ipocras to the Judges; and returning, when the Judges have drank, they make the like solemn congee, and so all depart, saving the new readers elect, who wait upon the Judges until their departure, and then usher them down the

hall unto the court-gate, where they take their leaves of them."

The Post Revels, as their name imports, took place after the Solemn Revels, and were performed "by the better sort of the young gentlemen of the Society, with galleards, corrantos, and other dances, or else with stage plays." (*Dugd. Orig. p.* 205.) In Dugdale's time the Post Revels had been much disused.

The foregoing is a description of the Revels which took place in the Middle Temple. They were much of the same nature at the other Societies.

"Lincoln's Inn had anciently its dancing, or revels, allowed on particular seasons, as well as the Temple, and that by the special order of the Society. For it appears that, in 9 Henry VI. it was ordered, 'That there should be four Revels that year, and no more; one at the Feast of All Hallown, another at the Feast of Saint Erkenwald, the third at the Feast of the Purification of our Lady, and the fourth on Midsummer Day;' one person yearly elected of the Society, being made choice of for the director of these pastimes, called the Master of the Revels. But these sports were used long before that time, as appears by an Order of Council, made on Allhallown Day, 8 Eliz. that the musicians, at the Ancient and Solemn Revels, (for so they were then called,)

should have their stipend increased, for their service on the two principal Feasts, Allhallown-tide and Candlemass; that is to say, where they were wont to have for their service done, for Allhallown even, Allhallown-day at noon, and Allhallown-day at night, 3s. 4d. that thenceforth they should have for their said service at that time, 3s. 8d. and the like sum at Candlemas, having had but 3s. 4d. before.

"Nor were these exercises of dancing merely permitted, but insisted on. For, by an order made 6th February, 7 Jac. I. it appears, 'that the under barristers were by decimation put out of commons, for example's sake, because the whole bar were offended by not dancing on the Candlemas-day preceding, according to the ancient order of this Society, when the Judges were present;' with a threat, that if the like fault were committed afterwards, they should be fined or disbarred." (*Herbert's Inns of Court, p.* 314.)

The following account of the Lincoln's Inn Revels is given by a contemporary writer.

"When I was of Lincoln's Inn, the fashion was, (and I think is still,) after dinner, upon grand and festive days, some young gentlemen of the house would take the best guest by the hand, and he the next, and so hand-in-hand they did solemnly pass about the fire, the whole company, each after other in order; to every staff a song,

(which I could never sing,) the whole company did, with a joined voice, sing this burthen:

"Some mirth and solace now let us take,
To cheer our hearts, and sorrows slake.

"Upon this kind of commencement of these Revels, I conceited thus:

"When wise rich lawyers dance about the fire,
Making grave needless mirth sorrows to slack,
If clients, (who do them too dearly hire,)
Who want their money and their comforts back,
Should for their solace dance about the hall,
I judge their dance were more methodical."

(*Hayman's Quodlibet.*)

The shadow of these singular ceremonies remained till towards the middle of the last century, as we learn from Mr. Sergeant Wynn, who gives the following entertaining account of the lawyers' "last Revel," in the notes to his Eunomus.

"The last Revel in any of the Inns of Court, was in the Inner Temple, held in honour of Mr. Talbot, when he took leave of that house, of which he was a bencher, on having the Great Seal delivered to him.

"A friend, who was present during the whole entertainment, obliged me with the following account, which, with some circumstances supplied by another gentleman, then likewise present, seemed worth adding here, by way of comparison

with those in former times, and as it may probably be the last of the kind.

"On the 2d of February, 1733, the Lord Chancellor came into the Inner Temple Hall, about two of the clock, preceded by the Master of the Revels, (Mr. Wollaston,) and followed by the Master of the Temple, (Dr. Sherlock,) then Bishop of Bangor, and by the Judges and Sergeants who had been members of that house. There was a very elegant dinner provided for them and the Lord Chancellor's officers; but the barristers and students of the house had no other dinner got for them than what is usual on all grand days, but each mess had a flask of claret, besides the common allowance of port and sack. Fourteen students waited at the bench-table, among whom was Mr. Talbot, the Lord Chancellor's eldest son; and by their means any sort of provision was easily obtained from the upper table by those at the rest. A large gallery was built over the skreen, and was filled with ladies, who came for the most part a considerable time before the dinner began; and the music was placed in the little gallery at the upper end of the hall, and played all dinner-time.

"As soon as dinner was ended, the play began, which was Love for Love, with the farce of the Devil to Pay. The actors who performed in them all came from the Haymarket in chairs, ready dress-

ed; and as it was said, refused any gratuity for their trouble, looking upon the honour of distinguishing themselves on this occasion as sufficient.

"After the play, the Lord Chancellor, Master of the Temple, Judges, and Benchers, retired into their Parliament-chamber, and in about half an hour afterwards came into the Hall again, and a large ring was formed around the fire-place, (but no fire or embers were in it.) Then the Master of the Revels, who went first, took the Lord Chancellor by the right hand, and he, with his left, took Mr. J. Page, who joined to the other Judges, Sergeants, and Benchers present, danced, or rather walked, round about the coal-fire, according to the old ceremony, three times, during which they were aided in the figure of the dance by Mr. George Cooke, the Prothonotary, then of sixty: and all the time of the dance, the ancient song, accompanied with music, was sung by one Toby Aston, dressed in a bar-gown, whose father had been formerly Master of the Plea-office, in the King's Bench.

"When this was over, the ladies came down from the gallery, went into the Parliament-chamber, and stayed about a quarter of an hour, while the Hall was putting in order; then they went into the Hall, and danced a few minuets. Country-dances began about ten, and at twelve, a very fine collation was provided for the whole company;

from which they returned to dancing, which they continued as long as they pleased; and the whole day's entertainment was generally thought to be very genteelly and liberally conducted. The Prince of Wales honoured the performance with his company part of the time: he came into the music-gallery incog. about the middle of the play, and went away as soon as the farce of walking round the coal-fire was over." (*Notes to Eunomus, vol.* ii. *p.* 288.)

DID SIR THOMAS MORE PERSECUTE HERETICS?

Sir Thomas More has been accused of having caused corporal punishment to be inflicted upon heretics. It is said by Mr. Butler, (*Memoirs of the Catholics, vol.* i. *p.* 68,) that the truth of this accusation seems to rest entirely on the credit of Fox, the Martyrologist, a writer, he observes, equally bigotted and credulous. In his anxiety to exonerate More from this charge, Mr. Butler appears to have overlooked the fact of More having certainly been during his life-time *accused* of cruelty towards the Protestants,—a fact sufficiently proved by his own denial of the charge, which denial is at the same time noticed by Mr. Butler. Fox was not, therefore, at all events, the first to make the accusation. Nor are there wanting other authorities to the same effect. It is said, in *Luther's Table-talk,* that Luther being

asked whether Thomas More was executed for the Gospel's sake? answered, "No, in no wise, for he was a notable tyrant. He was the King's chiefest counsellor, a very learned, and a wise man. He shed the blood of many innocent Christians that confessed the Gospel; those he plagued and tormented with strange instruments, like an hangman, &c." (*Colloq. Mensal. p.* 464.) This statement is, indeed, at variance with another, which depends upon the authority of Erasmus, who asserts, that no one was put to death for his opinions whilst More was Chancellor. Erasmus, however, is mistaken in this assertion, for Bainham suffered while More held the Seals. The following is Burnet's account of the transaction: "James Bainham, a gentleman of the Temple, was carried to the Chancellor's house, where much pains was taken to persuade him to discover such as he knew in the Temple who favoured the new opinions; but fair means not prevailing, More made him be whipt in his presence, and after that sent him to the Tower, where he looked on and saw him put to the rack. He was burnt in Smithfield, and with him More's persecution ended; for soon after he laid down the Great Seal, which set the poor preachers at ease." (*Burnet's History of the Reformation, vol.* i. *p.* 158.)

If we were to judge of More's severity to others by the austerities which he practised to-

wards himself, there would be some colour for the accusations against him; or if we measured the violence of his actions by the vehemence of his words, we might, perhaps, arrive at the same conclusion.

"It is," says Burnet, "remarked by Atterbury, that More, in his Answer to Luther, forgot himself so, as to throw out the greatest heap of nasty language that, perhaps, ever was put together; and that the book throughout is nothing but downright ribaldry, without a grain of reason to support it, and gave the author no other reputation, but that of having the best knack of any man in Europe at calling bad names in good Latin. The like censure do his English Tracts against Tindal, Barns, &c. deserve."

On the other hand, to oppose this evidence, we have the solemn denial of More himself, in the 36th Chapter of his Apology, where he appeals to God for the truth of the denial. His conduct also towards his son-in-law, Roper, as related by one of his biographers, discountenances the idea of his cruelties. "More frequently and seriously conversed with him on the subject of his religion; (Roper was at this time a Lutheran,) but finding his arguments ineffectual, said to him, 'I will no longer *dispute* with you,—I will pray to God for you!' The consequence was, that, within a few days afterwards, Roper voluntarily confessed

to his wife, that he was become a convert to the Catholic religion." (*Stapleton, vita Mori, p.* 89.)

It is very difficult to believe, that the same man who had once entertained the rational opinions on religious toleration, which are promulgated in the Utopia, should become the violent persecutor, which More is represented to have been. King Utopus "made a decree, that it should be lawful for every man to favour and follow what religion he would; and that he might do the best he could to bring others to his opinion, so that he did it peaceably, gently, quietly, and soberly, without hasty and contentious rebuking and inveighing against others. If he could not by fair and gentle speech induce them into his opinion, yet he should use no kind of violence, and refrain from displeasant and seditious words." (*Utopia, Dibdin's Edit. vol.* ii. *p.* 201.)

Upon the whole, the evidence against More does not seem sufficient to justify us in stigmatizing him as a persecutor.

JUDICIAL POLITENESS.

Sir James Dyer, in his Reports, after stating the opinions of himself and some of his brothers, adds, not very urbanely, "but Baldwin was of a contrary opinion, though neither I nor any one else, I believe, understood his refutation." (*Dyer,* 43. *a.*)

CALLING TO THE BAR.

It is singular that so long a noviciate should have been required in early times before a student was allowed to be called to the bar. At present a person who does not possess a Master of Arts' degree cannot be called until his name has been on the books of the society for five years, during three of which he must keep terms. In very early times, by the orders of the Inner Temple, no one could have been called to the bar under eight years, which had been reduced in Dugdale's time to seven. During this period, the student (unless he were called *ex gratiâ*,) was to perform twelve grand moots, and twenty-four petty moots at some Inn of Chancery. (*Dugd. Orig. p.* 159.) In the Middle Temple there was a similar order made 11 James I. that no one should be called to the bar under seven years' standing. (*Ibid. p.* 191.) So in Gray's Inn, by an order made 5 Charles I., no gentleman could be called to the bar unless he had been seven years usually in commons in this society; or, of two years' continuance usually in commons in an Inn of Chancery, and five years at least in usual commons in this house. (*Ibid. p.* 281.)

Not satisfied with requiring this tedious probation, it was thought fit, by the Benchers of the Middle Temple, in 1 Eliz. to prohibit the Utter

Barristers from pleading at any bar until they were of twelve years' standing. This prohibition issued by command of the Judges, (*Dugd. Orig. p.* 191,) but it was probably soon forgotten, for, in the year 1635, we find the following order, amongst others, proceeding from the same Society.

"That whereas there have been heretofore, anciently, divers acts made by the preceding Benchers, govenours of this house, to restrain the too early practice of young Barristers, which suit not so well unto these times: the Masters of the Bench have therefore ordered, that no young Barrister presume to take upon him to practise, in any of the Courts at Westm. before he have been full three years at the Barr, at least, upon pain to be corrected before the Bench, and fined, or otherwise dealt with, as to them in their discretions shall seem meet. Neither do they intend to call any to the Barr hereafter, other than such as have their full time and are otherwise qualified thereunto, as the orders of the house do require: and therefore they enjoin the gentlemen under the barr to apply and follow their studies to keep the case, to perform their exercises, to order their habits and hair to decency and formality, according to the orders of the House; and to yield due respect and observance to the Benchers and ancients, their govenours, as they expect and desire the preferment to the degree of the Barr, or other-

wise care to be lyable to the censure of the Bench; or (as the cause shall require) to be cut off from the Society."

CHARACTER OF LORD HARDWICKE, BY LORD CHESTERFIELD.

"Lord Hardwicke was, perhaps, the greatest magistrate this country ever had. He presided in the Court of Chancery above twenty years, and in all that time none of his decrees were ever reversed, nor the justness of them questioned. Though avarice was his ruling passion, he was never in the least suspected of any kind of corruption—a rare and meritorious instance of virtue and self-denial, under the influence of such a craving, insatiable, and increasing passion.

"He had great and clear parts; understood, loved, and cultivated the belles lettres.

"He was an agreeable, eloquent, speaker in parliament, but not without some little tincture of the pleader.

"Men are apt to mistake, or at least seem to mistake their own talents, in hopes, perhaps, of misleading others, to allow them that which they are conscious they do not possess. Thus Lord Hardwicke valued himself more upon being a great minister of state, which he certainly was not, than upon being a great Chancellor, which he certainly was; all his notions were clear, but none of them

great. Good order and domestic details were his proper department. The great shining parts of government, though not above his parts to conceive, were above his timidity to undertake. By great and lucrative employments, during the course of thirty years, and still greater parsimony, he acquired an immense fortune, and established his numerous family in profitable posts and advantageous alliances.

"Though he had been Solicitor and Attorney General, he was by no means, what is called a prerogative lawyer—he loved the constitution, and maintained the just prerogative of the crown, but without stretching it to the oppression of the people.

"He was naturally humane, moderate, and decent; and when by his former employments he was obliged to prosecute state criminals, he discharged that duty in a very different manner from most of his predecessors, who were too justly called the blood-hounds of the crown.

"He was a cheerful, instructive companion; humane in his nature, decent in his manners, unstained with any vice (avarice excepted); a very great magistrate, but by no means a great minister.

"But I cannot give a better or more proper account of the close of his life than as the matter of fact was given the public, in the narration of it, in the chronicles of those times.—'On

LORD HARDWICKE.

Tuesday, March 6, 1764, died, at his house in Grosvenor-square, in his seventy-fourth year, Philip, Earl of Hardwicke, whose character and conduct will adorn the most interesting period in the history of this age and country. At present it may suffice to pay this small tribute to his memory. After a well-grounded education in classical learning, which he retained and cultivated amidst his most laborious and highest employments, he applied himself to the study of the law, in the Middle Temple, with uncommon success; and soon became so eminent in his profession, that, at the age of twenty-nine, on the 23rd of March, 1719-20, he was promoted to the office of Solicitor-General, being honoured with Knighthood the June following. In February, 1723-4, he was made Attorney-General. Upon the resignation of the great seal, by Peter, Lord King, in October, 1723, Sir Philip Yorke waived his own pretensions, founded on both merit and priority of rank, in favour of his friend, Charles Talbot, esq. then Solicitor-General, and accepted the important place of Lord Chief Justice of the King's Bench, being soon after raised to the dignity of a Baron of this kingdom. The reputation with which he filled that seat of judicature could only be equalled by that with which he afterwards discharged the office of Lord High Chancellor, when called to it on the decease of Lord Talbot, in

February, 1736-7. And it is no small evidence of the acknowledged abilities and integrity with which he presided in the Court of Chancery, that, during the space of twenty years, in which he sat there, only three of his decrees were appealed from, and those afterwards confirmed by the House of Lords. After he had executed that high office many years, he was, in April, 1754, advanced by his late Majesty, as a mark of his royal approbation of his Lordship's long and eminent services, to the rank of an Earl of Great Britain. His resignation of the Great Seal, in November, 1756, gave an universal concern to the nation, however divided at that time in other respects, but he still continued to serve the public in a more private station, with an unimpaired vigour of mind, which he enjoyed even under a long and severe indisposition, till his latest moments.

'His talents as a speaker in the Senate, as well as on the Bench, have left too strong an impression to need being dilated upon, and those as a writer were such as might be expected from one who had early distinguished himself in that character in the Spectator.

'His private virtues, amiableness of manners, and extent and variety of knowledge, were as much esteemed and admired by those who had the honour and happiness of his acquaintance, as

his superior abilities were by the nation in general. In his public character, wisdom, experience, probity, temper, candour, and moderation, were so happily united, that his death, in the present situation of affairs, is a loss to his country, as unseasonable as it is important.'

"I might add to this account of the close of his life and summary of his character, some strictures, published about the same time, by a very respectable author, who styled himself, The Father of Candour, in a very ingenious and learned tract, entitled, A Letter concerning Libels, Warrants, and Seizures of Papers, which contain charges, tending to depreciate the acknowledged merits and high reputation of the Earl of Hardwicke. But these I forbear to exhibit till I may be furnished, as I hope to be, with materials for refuting such charges, that the antidote may attend the poison of malignity, and that I may be able to represent the good qualities of this truly great man without impurity or alloy." (*Sketches of the Life of Philip, Earl of Hardwicke, p.* 46.)

CHARLES THE SECOND'S VISIT TO THE TEMPLE.

"On Thursday, Aug. 15, An. 1661, 13 Car. 2. Sir Heneage Finch, Knight and Baronet, Sollcitor-General to the King, being reader, kept his feast in the great Hall of the Inner Temple.

"To the honour of whom, and of the whole

Society, the King came in his barge from Whitehall, accompanied by the Duke of York; and attended by the Lord Chancellor, Lord Treasurer, Lord Privy Seal; the Dukes of Buckingham, Richmond, and Ormond; Lord Chamberlain of his Household; the Earles of Ossory, Bristol, Berks. Portland, Strafford, Anglesey, Essex, Bathe, and Carlisle, The Lords Wentworth, Cornbury, De la Warre, Gerard of Brandon, Berkley of Stratton and Cornwallis, the Comptroller and Vice-Chamberlain of his Majesty's Household, Sir Will. Morice, one of his principal Secretaries of State, The Earle of Middleton, Lord Commissioners of Scotland, the Earle of Glencairne, Lord Chancellor of Scotland, The Earles of Lauderdale and Newburgh, and other the Commissioners of that Kingdome, with the Earle of Kildare and other Commissioners of Ireland.

"At the Staires, where his Majesty landed, stood to receive him, the reader, and the Lord Chief Justice of the Common Pleas, in his scarlet robe and collar of SS.

"On each side, as his Majesty passed, stood the reader's servants, in scarlet cloaks and white tabba doublets; there being a way made through the wall into the Temple Garden; and above them, on each side, the Benchers, Barristers, and other gentlemen of the Society, all in their gowns and formalities, the loud music playing from the

time of his landing till he entered the Hall; where he was received with 20 violins, which continued as long as his Majesty stayed.

"Dinner was brought up by fifty select gentlemen of the society, in their gowns, who gave their attention all dinner while, none other appearing in the Hall but themselves; the King and the Duke of York sitting under a canopy of state, at a table set at the upper end of the Hall, advanced three steps above the rest. The Lord Chancellour, with the rest of the noblemen, sitting at a long table on the right side of the Hall, and the Reader, with those at the Society, on the other side.

"On the third of November following, to the farther honour of this Society, his royal highness the Duke of York, the Duke of Buckingham, the Earl of Dorset, and Sir William Morice, Knight, one of his Majesty's principal Secretaries of State, were admitted of this House; the Duke of York being then called to the Bar and Bench.

"And on the 4th of Nov. 14 Charles II. his Highness Rupert, Prince Palatine, Thomas Earl of Cleveland, Jocelyn Lord Percy, John Lord Berkley, of Stratton, with Henry and Bernard Howard, of Norfolk, were admitted of this Society." (*Dugd. Orig. Jurid. p.* 157.)

THE LAWYER AND SAWYER.

1.

To fit up a village with tackle for tillage
  Jack Carter he took to the saw;
To pluck and to pillage the same little village
  Tim Gordon he took to the law;
Thus angled so pliant for gull and for client,
  As sharp as a weasel for rats;
Till, what with their saw-dust and what with their law-dust,
  They blinded the eyes of the flats.
Then hey for the sawyer, and hey for the lawyer,
  Make hay for it's going to rain;
And saw'em and law'em, and work'em and quirk'em,
  And at 'em again and again.

2.

Jack brought to the people a bill for the steeple,
  They swore that they would not be bit;
But out of a saw-pit is into a law-pit,
  Tim tickled them up with a writ.
Cried Jack, the saw rasper, "I say, neighbour Grasper,
  We both of us buy in the stocks,
While I for my savings, turn blocks into shavings,
  You lawyers are shaving the blocks."
Then hey, &c. &c.

3.

Jack frolick'd in clover, and, when work was over,
Got drunk at the George for a freak;
But Timothy Gordon, he stood for churchwarden,
And ate himself dead in a week.
Jack made him a coffin, but Timothy off in
A loud clap of thunder had flown;
When lawyers lie level, be sure that the devil
Looks sharp enough after his own.
Then hey for the sawyer, &c. &c.

LORD HARDWICKE.

The following account of the personal appearance and character of Lord Hardwicke will be found in a letter addressed to Mr. Cooksey, and published by him in his Sketches, &c. of Lord H. The letter appears to have been written by some one who had an antipathy to his Lordship.

"He was one of the handsomest men of the age, and bestowed great attention on his appearance and dress. By this he attracted the approbation of his lady, the niece of Sir Joseph Jekyl, whom he occasionally met with at the Rolls, to whome he proved most properly and affectionately attached, nor was ever guilty of playing the fool (which was always his term for intriguing) with any other woman. The reports, circulated in those times, relative to Lady B— and Mrs. Wells,

I consider as idle tales, without the least foundation in truth. He was a perfect pattern of temperance and sobriety. His meals were not even convivial. After his dinner, which was generally late, he latterly dozed for some minutes, during which his lady kept up some degree of cheerful conversation. On recovering, and her retiring, a stiff and ceremonious talk took place, in which to involve his son, Heathcote, when he was of the party, he would observe, that Rutlandshire, being the least county in England, his father, Sir Gilbert, was supposed to be in possession of one half of it; and if he goes on to accumulate as he has done, bids fair to be the proprietor of a whole county, a point at which no one in England ever yet arrived. On this, some sycophant would observe, that his lordship might perhaps be charged with a similar view, in regard to the county of Cambridge; for though Wimple as yet bore no proportion to the whole, yet the title deeds of a full moiety of it might already be found there:—(a smile.)—The stately and ceremonious reception of his visitors, on a Sunday evening, was insipid and disgusting in the highest degree. For the vanity displayed in the painted windows of the Chapel at Wimple, his family offer in excuse, that the several arms of the illustrious names, connected with the house of Yorke, were collected, blazoned, and presented to him by Mr.

Prowse, member for the county of Somerset. Stranger as he was to the life and habits of country gentlemen, he treated them with insulting inattention and hauteur. Came they from never so distant a part of the county, either to visit his lordship, or see his place, their horses were sent for refreshment to the Tiger, a vile inn, near half a mile distant, as I have experienced more than once. He had no love for the country, or peculiar taste for improvement. Wimple exhibited scenes magnificent and vast, without being pleasing to the eye. He submitted, indeed, like other Lords, sometimes to entertain the natives, but with a visible and contemptuous superiority that disgusted rather than obliged them. When in high good humour, he had two or three stock stories to make his company laugh, which they were prepared, and expected to do. One was of his bailiff, Woodcock, who, having been ordered by his lady to procure a sow she particularly described to him, came one day into the dining room, when full of great company, proclaiming, with a burst of joy he could not suppress, 'I have been at Royston fair, my Lady, and got a sow exactly of your Ladyship's size.' "

LADY HARDWICKE.

Lord Hardwicke was frequently accused of parsimony, and from the following passage it would

appear that his lady was not altogether exempt from similar charges. This failing has been imputed to the ladies of more than one of our Chancellors.

"Wimple possesses, and will long possess, a signal, and literally, a shining proof of the good management, sagacity, and foresight, of this most excellent lady. The purse in which the Lord Chancellor carries with him the great seal of England, is decorated with the king's arms and other devices, curiously embroidered, by the most ingenious artists, in that way, possible to be procured. This purse and embroidery, by ancient custom, is annually renewed, and that of the former year, not at all the worse for wear, usually remained a perquisite, of no considerable value, to some one or other, into whose hands it happened to come. Lady Hardwicke, observing and availing herself of this custom, caused the new annual decorations of the purse to be embroidered, in its usual form, on a large piece of rich crimson velvet, of a dimension corresponding to the height of one of the state rooms of Wimple, as if she had foreseen the number of years her lord would enjoy the post of Chancellor. The purses, just twenty in number, complete the hangings of the room, and the curtains of a bed singularly magnificent; the rich embroidery on each piece, like trophies, unwarlike indeed, but bearing honourable memorial of

the number of years that high and important post was held by the founder of the family, with the most irreproachable character for justice and integrity. Nor is it less to the honour of the economy and foresight of Lady Hardwicke, that without the least injury to any one, she contrived, at a trifling expense, to put that family in possession of such memorial, so unique in its kind, and so superior to any magnificence in furniture, and display of grandeur, that the most lavish expenditure could supply. With a just abhorrence of the abuse and misapplication of riches, no one ever knew better their use, or applied them with more propriety in the supply of every expense becoming her lord's rank and station in life. She would often smile at hearing the idle and malevolent tales of the cold chine being turned and found bare, the potted saw-dust to represent lamprey, and the want of Dr. Mead's kitchen to be added to Powis house; and only observe, that uncertain as was the time of the Lord Chancellor's dining, and the company that would attend him, yet if it should happen that he brought with him an ambassador, or person of the highest rank, he never found a dinner or supper to be ashamed of." (*Cooksey's Sketches of the Life of Lord Hardwicke*, *p.* 39.)

PARLIAMENTUM INDOCTUM.

It is said by Hume, (*v.* ii. *p.* 233, 4to. *Edit.*) that lawyers were totally excluded the House of Commons during several parliaments in Edward the Third's time, and Cotton's Abridgment, p. 18, is cited in support of the assertion, but as Mr. Wynn has remarked, the page cited does not support the statement. (*Eunomus, v.* ii. *p.* 247.) However, in the reign of Henry IV. this exclusion certainly took place. "Rex brevia direxit vicecomitibus, ne quosdam pro comitatibus eligerent qui in jure regni docti fuissent." (*Tho. Walsingham, p.* 37.) Some curious information has been collected on this subject by Mr. Barrington. (*Observations on Ancient Statutes, p.* 373.) Carte, the historian, supposes that the great reason for the lawyers pushing in shoals to become members of parliament arose from their desire to receive the wages then paid them by their Constituents, whilst from their profession they were obliged to be resident in London; whereas, often members could not attend but with considerable expense, (*vol.* ii. *p.* 481.) Whitelocke says that the lawyers were excluded by the Crown, who apprehended opposition from them. Mr. Barrington imagines that the exclusion arose not from contempt of the common law itself, but the professors of it, who being at this time *Auditors* to men of property,

received an annual stipend *pro consilio impenso et impendendo*, and were treated as retainers. Chaucer, in his Character of the Temple Manciple, says,—

"Of Masters had he more than thrysis ten
That were of Law expert and curious,
Of which there were a dozin in that house
Worthy to ben Stuards of house and londe
Of any Lord that is in Englonde."

It should seem from hence, continues Mr. Barrington, that the great preferment which advocates at this time chiefly aspired to was, to become steward to some great man.

In the reign of James I. a proclamation issued directing voters "not to choose curious and wrangling lawyers, who may seek reputation by stirring needless questions."

PROFESSIONAL EMOLUMENTS.

It is difficult to ascertain what were the emoluments of our lawyers in early times. The following entry is said to exist in the churchwarden's accounts of St. Margaret, Westminster, for the year 1476. "Also, paid to Roger Fylpott, learned in the Law, for his Counsel, giving 3s. 9d. with 4d. for his dinner." The income of Sir Thomas More, in the reign of Henry VIII. (the earliest case with which we are acquainted) was 400l. He told his son-in-law, Mr. Roper, that he acquired

by his profession about this sum annually, "with a good conscience." "This," observes More, in his Life of his Grandfather, "was a large gain, in those days, when lawyers sped not so well as now," (Charles the First's time.) (*More's Life of More, p.* 30.) In the reign of James I. the profits of the Lawyers had probably increased considerably. "There is a common tradition in Westminster Hall," says Mr. Barrington, "that Sir Edward Coke's gains equalled those of a modern Attorney-General." This is probably exaggerated, although Bacon, in the same reign, appears to have made 6000l. a year, as Attorney-General. "Brownlow's profits likewise, one of the Prothonotaries, during the reign of Queen Elizabeth, were 6000l. per ann. I received this account," continues Mr. Barrington, "from one who had examined Brownlow's Books, and who also informed me that Brownlow used to close the profits of the year with *Laus Deo*, and when they happened to be extraordinary, with *Maxima Laus Deo*." (*Observations on the Anc. Stat. p.* 509.)

In the reign of Charles II. we learn the value of the Attorney's place, from the Life of Lord Keeper Guilford. "The Attorney's place was (with his practice) near seven thousand pounds per annum, and the Cushion of the Common Pleas (the place of L. C. J.) not above four thousand pounds." (*vol.* i. *p.* 183.) The gains of a man in first-rate

practice at the bar, at this period, scarcely seem to have been proportionably great.

"My lord (Sir Matthew Hale) said, that 1000l. a year was a great deal for any common lawyer to get; and Mr. B. said that Mr. Winnington did make 2000l. per year by it. My lord answered, that Mr. W. made great advantage by his city practice, but did not believe he made so much of it." (*Seward's Anecdotes, vol.* iv. *p.* 418.)

Some idea of the amount of Counsel's fees in the reign of James II. may be formed from the "Account of the Expenses sustained by the seven Bishops, on their Prosecution, &c." (*See* 12 *State Trials, p.* 516.) The largest fee given on this occasion was 20 guineas, and the total amount paid to Counsel, 240l. 16s.

THE CHARACTER OF AN HONEST LAWYER.

BY H. G.

The following "Character" is appended to the *Strictures on the Lives and Characters of the most Eminent Lawyers of the present Day,* (1790,) and is there stated to be from an old writer. The Editor of the present volumes is not acquainted with the source from which it is derived.

"An Honest Lawyer is the life-guard of our fortunes, the best collateral security for our estate: a trusty pilot to steer one through the dangerous (and oftentimes inevitable,) ocean of

contention: a true priest of justice, that neither sacrifices to fraud nor covetousness, and in this outdoes those of higher function; that he can make people honest that are sermon-proof.—He is an infallible anatomist of *Meum* and *Tuum*, that will presently search a cause to the quick, and find out the peccant humour, the little humour, the little lurking cheat, though masked in never so fair pretences; one that practises Law, so as not to forget the Gospel; but always wears a conscience as well as a gown; he weighs the cause more than gold; and if that will not bear the touch, in a generous scorn puts back the fee.

"Though he knows all the criticisms of his faculty, and the nice snapperadoes of practice, yet he never useth them, unless in a defensive way, to countermine the plots of knavery, for he affects not the devilish skill of out-baffling right, nor aims at the shameful glory of making a bad cause good, but with equal contempt hates the wolf's study, and the dog's eloquence, and disdains to grow great by crimes, or build himself a fortune on the spoils of the oppressed, or the ruin of the widow and orphan. He has more reverence for his profession, than to debauch it to unrighteous purposes, and had rather be dumb than suffer his tongue to pimp for injustice, or club his parts to bolster up a cheat with the legerdemain of law-craft.

"He is not faced like Janus, to take a retaining fee from plaintiff, and afterwards a back-handed bribe from the defendant, nor so double-tongued, that one may purchase his pleading, and the other, at the same, or a larger price, his silence; but when he undertakes a business, he espouses it in earnest, and does not follow a cause, but manages it. A mollifying letter from the adversary's potent friend, a noble treat, or the remora of a lusty present from the great, have no influence to make him slacken his proceedings; for he is so zealous for his client's interest, that you may sooner divorce the sun from the ecliptic, than warp him from his integrity, yet still is his patron only *usque ad aras*, (as far as just,) for if once he finds the business smells rank, St. Mark's treasure, or the mines of Potosi, are too small a fee to engage him one step further.

"As his profession is honourable, so his education has been liberal and ingenuous, far different from that of some jilting pettifoggers and purse-milking law drivers, whose breeding, like the cuckoo's, is in the nest of another trade, where they learn wrangling and knavery in their own causes, to spoil other men, and, with sweetened ingredients of mechanic fraud, compound themselves (though simple enough,) fit instruments for villany. But his greener years were seasoned with literature, and can give better proofs of his

university learning, than his reckoning up the colleges, and boasting his name in the buttery-book: he understands logic, (the method of right reasoning,) and rhetoric, (the art of persuasion,) is well seen in history, (the free-school of prudence,) and no stranger to the ethics and politics of the ancients. He is skilled in other languages besides declaration, Latin and Norman gibberish: he read Plato and Tully before he saw either Littleton or the Statute-book, and grounded in the principles of nature, and customs of nations, came (*lotis manibus*,) to the study of our common municipal law, which he found to be *multorum annorum opus*, a task that requires all the nerves of industry, and therefore employed his time at the Inns of Court, better than in hunting after new fashions, starting fresh mistresses, haunting the playhouses, or acquiring the other little town accomplishments, which render their admirers fine men in the opinion of fools, but egregious fops in the judgment of the wise.

"In his study, he traffics not only with the infantry of epitomes, abridgments, and diminutive collectors in decimo-sexto, but draws his knowledge from the original springs, digesting the whole body of the law, in a laborious and regular method, but especially aims to be well versed in the practice of every court, and rightly to understand the art of good pleading, as knowing them

to be the most useful to unravel the knotty intrigues of the cause, and reduce it to an issue, yet hates to pester the court with circuities, negative pregnants, departures, and multiplied inconveniencies.

"He never goes about with feigned allegations to cast a mist before the eyes of Justice, that she may mistake her road, and assign the child to the wrong mother: endeavours not to pack a jury by his interest to the under-sheriff; nor to balk an evidence with a multitude of sudden ensnaring interrogatories; nor maintains any correspondence with the Knights of Alsatia, or Ram-alley vouchers. He can prosecute a suit in equity, without seeking to create a whirlpool, where one order shall beget another, and the poor client be swung round (like a cat before execution,) from decree to rehearsing, from report to exception, and *vice versa*, till his fortunes are ship-wrecked, and himself drowned, for want of white and yellow earth to wade through on. He never studies delays, to the ruin of a family, for the lucre of ten groats, nor by drilling quirks, spins out a suit more lasting than buff, depending a whole revolution of Saturn, and entailed on the third and fourth generation. He does not play the empiric with his client, and put him on the rack to make him bleed more freely, casting him into a swoon with frights of a judgment, and then reviving him again with

a cordial of writ of error, or the dear elixir of an injunction, to keep the brangle alive as long as there are any vital spirits in the pouch. He can suffer his neighbours to live quiet about him without perpetual alarms of actions and indictments, or conjuring up dormant titles to easy commodious seat, and making the land fall five years' purchase, merely for lying within ten miles of him.

"He delights to be an arbitrator, not an incendiary, and has *beatus pacificus* oftener in his mouth than *currat lex*. He never wheedles any into endless suits for trifles, nor animates them to undo themselves and others, for damage feasant, or insignificant trespasses, *pedibus ambulando*, but (as Telephus' sword was the best cure for the wounds it made,) advises people to compose their assaults and slanders over the same ale that begot them; nor does he, in weightier cases, extort unreasonable fees; for, whatever the foul-chapped rabble may suggest, a lawyer's profession is not mercenary; the money given him is only an honorary gratuity for his advice and trouble, or a grateful acknowledgement of our obligations for his well intended endeavours, and the old emblem, of the bramble's tearing the sheep's fleece that run to it for shelter in a storm, can have no reflection upon him, whose brain is as active, and his tongue as volatile, for a pennyless

pauper, as when oiled with the *aurum potabile* of a dozen guineas.

"In a word, whilst he lives he is the delight of the court, the ornament of the bar, the glory of his profession, the patron of innocency, the upholder of right, the scourge of oppression, the terror of deceit, and the oracle of his country; and when death calls him to the bar of heaven, by a *habeas corpus cum causis*, he finds his judge his advocate, nonsuits the devil, obtains a *liberate* from all his infirmities, and continues still one of the Long Robe in Glory."

MR. JUSTICE POWIS.

"It was Powis's misfortune to be so addicted to blunders, that the late Duke of Wharton, who was the brightest genius, perhaps, of the age wherein he lived, though, unhappily for himself and his country, he was at the same time the most profligate of mankind, took occasion to introduce Judge Powis into a lampoon; wherein the Duke was very severe on several of the Judges of that time: he was, however, not wanting in doing justice to the character of such of them as were deserving.

"When York* to heaven shall lift one solemn eye,
And love his wife above adultery;

* Blackburne, Archbishop of York.

When godliness to gain shall be preferr'd
By more than one of the right reverend herd;
When Parker shall pronounce one right decree,
And Hungerford refuse his double fee;
When Pratt with justice shall dispense the laws,
And King impartially decide a cause;
When Tracey's generous soul shall swell with pride,
And Eyre his haughtiness shall lay aside;
When honest Price shall trim and truckle under,
And Powis sum a cause without a blunder;
When Page one uncorrupted finger shows,
And Fortescue deserve another nose;
Then shall I cease my charmer to adore,
And think of love and politics no more."

(*See Cooksey's Sketch of the Life of Lord Hardwicke, pp.* 58. 66.)

EXAMINATION OF A LEARNED APOTHECARY.

At the Staffordshire Lent Assizes, 1819, an action was tried for the recovery of the penalties under the new Apothecaries' Act, in which a man of the name of Warburton, was defendant. It was attempted to be proved for the defence, that Warburton had practised as an apothecary before the passing of the Act; and to establish this, the father of the defendant, who had originally been a gardener, but afterwards became a cow-leech, was called, when the following examination took place.

Mr. *Dauncey*. Mr. Warburton, have you always been a surgeon?

Witness appealed to the Judge whether this was *a proper answer*.

Judge. I have not heard any answer: Mr. Dauncey has put a question.

Witness. Must I answer it?

Judge. Yes: why do you object?

Witness. I don't think it a proper *answer*.

Judge. I presume, you mean question; but I differ from you in opinion.

The Witness not answering, Mr. Dauncey repeated,—have you always been a surgeon?

Witness. I am a *surjent*.

Dauncey. Can you spell the word you have mentioned?

Witness. My Lord, is that a fair answer?

Judge. I think it a fair question.

Witness. S y u r g u n t.

Dauncey. I am unfortunately hard of hearing; have the goodness to repeat what you have said, Sir.

Witness. S u r g e n d.

Dauncey. S--, what did you say next to S, Sir?

Witness. S y u r g u n d.

Dauncey. Very well, Sir, I am perfectly satisfied.

Judge. As I take down the word *Sur*—, please to favour me with it once more.

Witness. S u r g u n t.

Judge. How, Sir?

Witness. S e r g u n d.

Judge. Very well.

Dauncey. Sir, have you always been what you say? that word, I mean, which you have just spelt? [A long pause.]

Dauncey. I am afraid, Sir, you do not often take so much time to study the cases which come before you, as you do to answer my question."—"I do not, Sir."—"Well, Sir, will you please to answer it?" [A long pause, but no reply.] "Well, what were you originally, Doctor Warburton?"

Witness. "S y u r g e n d."—"When you first took to business, what was that business?"—"S u r g u n t."—"I do not ask you to spell that word again; but before you were of that profession, what were you?"—"S e r g u n t."

Dauncey. My Lord, I fear I have thrown a *spell* over this poor man, which he cannot get rid of.

Judge. Attend, Witness; you are now to answer the questions put to you. You need not spell that word any more.

Dauncey. When was you a gardener?

Witness. I never was." The Witness then stated, that he never employed himself in gardening, he was a farmer. His father was a farmer. He (witness,) ceased to be a farmer fifteen or sixteen years ago; he ceased, because he had then learnt

that business which he is. "Who did you learn it of?"—"Is that a proper question, my Lord?"—"I see no objection to it."—"Then, I will answer it; I learnt of Dr. Hulme, my brother-in-law; he practised the same as the Whitworth doctors, and they were regular physicians."

Dauncey. Where did they take their degrees?

Witness. "I don't believe they ever took a degree."—"Then, were they regular physicians?"—"No! I believe they were not, they were only doctors."—"Only doctors! were they doctors in law, physic, or divinity?"—"They doctored cows and other things, and human as well."—"Doubtless, *as well*; and you, I doubt not, have doctored brute animals *as well* as human creatures?"—"I have."

Judge to Witness. "Did you ever make up any medicine by the prescription of a physician?"—"I never did."—"Do you understand the characters they use for ounces, scruples, and drachms?"—"I do not."—"Then you cannot make up their prescriptions from reading them?"—"I cannot; but I can make up as good medicines in my way as they can in theirs." "What proportion does an ounce bear to a pound?" [A pause.] "There are sixteen ounces to the pound; but we do not go by any regular weight; we mix ours by the hand." "Do you bleed?" "Yes." "With a fleam or with a lancet?" "With a lancet."

"Do you bleed from the vein or from the artery?" "From the vein." "There is an artery somewhere about the temple; what is the name of that artery?" "I do not pretend to have so much learning as some have." "Can you tell me the name of that artery?" "I do not know which you mean." "Suppose, then, I was to direct you to bleed my servants, or my horse, (which God forbid,) in a vein, say, for instance, in the jugular vein, where would you bleed him?" "In the neck, to be sure."

Judge. I would take every thing as favourably for the young man as I properly can; but here we have ignorance greater, perhaps, than ever appeared in a court before, as the only medium of education which this defendant can possibly have received in his profession.

Several other witnesses were examined for the defence.

Baron Garrow, in summing up, observed, that this was a question of considerable importance to the defendant in the cause, on whose future prospects it must necessarily have great influence, and it was of the last importance to the public. The learned Judge commented strongly on the ignorance of the defendant's father, a man more ignorant than the most ignorant they had ever before heard in any court. Was this man qualified for professing any science, particularly one in which

the health, and even the lives, of the public were involved? Yet, through such an impure medium alone, had the defendant received his knowledge of this profession. There was not the least proof of the defendant having, for a single minute, been in a situation to receive instruction from any one really acting as an apothecary. If the Jury thought that the defendant has acted *as an apothecary* before the time mentioned in the act, they would find a verdict for him; but otherwise, they would find for the plaintiffs in one penalty. The Jury almost immediately returned a verdict for the plaintiffs.

THE PROFESSION OF THE LAW.

It is with sincere pleasure, and with the most unaffected admiration for the genius of the writer, that we insert the following powerful passage from a work, which, in every point of view, presents the most pleasing specimen of Legal Biography with which we are acquainted,—the Life of Mr. Curran, by his Son, Mr. W. H. Curran.

"It may, too, be here observed, that had he (Curran,) been originally more favoured by fortune, his prospect of distinguished success in his profession might not have been so great. There is, perhaps, fully as much truth as humour in the assertion of an English Judge, that a barrister's first requisite for attaining eminence, is, 'not to

be worth a shilling.'* The attractions of the bar, when viewed from a distance, will dazzle and seduce for a while. To a young and generous spirit it seems, no doubt, a proud thing to mix in a scene where merit and talent alone are honoured, where he can emulate the example, and, perhaps, reach the distinctions of our Hales, and Holts, and Mansfields. But all this fancied loveliness of the prospect vanishes the moment you approach and attempt to ascend. As a calling, the bar is, perhaps, the most difficult, and, after the first glow of enthusiasm has gone by, the most repelling. To say nothing of the violence of the competition, which alone renders it the most hazardous of professions, the intellectual drudgery that it involves, is such as few have the capacity, or without the strongest incitements, the patience to endure. To an active and philosophic mind, the mere act of reasoning, the simple perception of relations, whatever the subject matter may be, is an exercise in which a mind so constituted may delight; but to such a one the study of the law has but little to offer. If the body of English law

* The learned Judge alluded to, upon being asked, "What conduced most to a barrister's success?" is said to have replied, "That barristers succeeded by many methods; some by great talents, some by high connexions, some by a miracle, but the majority by commencing without a shilling."

be a scientific system: it is a long time a secret to the student; it has few immutable truths, few master maxims, few regular series of necessary and nicely adapted inferences. In vain will the student look for a few general principles, to whose friendly guidance he may trust, to conduct him unerringly to his object; to him it is all perplexity, caprice, and contradiction,* arbitrary and mysterious rules, of which to trace and comprehend the reasons, is the work of years,—forced constructions, to which no equity of intention can reconcile,—logical evasions, from which the mind's pride indignantly revolts,—of all these the young lawyer meets abundance in his books; and to encounter and tolerate them, he must have some stronger inducement than a mere liberal ambition of learning or of fame. We consequently find that there is no other profession supplying so many members, who never advance a single step; no other which so many abandon, disgusted and dis-

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* This was at least what Mr. Canning found it. In his Poem on Friendship, already mentioned, he says,

"Oft when condemn'd 'midst Gothic tomes to pore,
And dubious, con th' embarrass'd sentence o'er,
While meteor meaning sheds a sickly ray
Through the thick gloom, then vanishes away,
With the dull toil tired out, th' indignant mind
Bursts from the yoke, and wanders unconfined."

heartened by the sacrifices that it exacts." (*Life of Curran, vol.* i. *p.* 92.)

A SPECIAL PLEADER.

The following admirable portrait of an incipient Special Pleader will be immediately recognized by all who are familiar with that most humorous production, The Pleader's Guide.

Whoe'er has drawn a Special Plea,
Has heard of old Tom Tewkesbury,
Deaf as a post, and thick as mustard,
He aim'd at wit, and bawl'd and bluster'd,
And died a Nisi Prius leader,—
That genius was my Special Pleader.—
That great man's office I attended,
By Hawk and Buzzard recommended,
Attorneys both, of wondrous skill
To pluck the Goose and drive the quill;
Three years I sat his smoky room in,
Pens, paper, ink, and pounce consuming,
The fourth, when Essoign-day begun,
Joyful I hail'd th' auspicious sun,
Bade Tewkesbury and Clerk adieu,
(Purification, eighty-two,)
Of both I wash'd my hands; and though
With nothing for my cash to show,
But Precedents, so scrawl'd and blurr'd,
I scarce could read one single word,

Nor in my books of Common Place,
One feature of the law could trace,
Save Buzzard's nose and visage thin,
And Hawk's deficiency of chin,
Which I, while lolling at my ease,
Was wont to draw instead of Pleas;
My chambers I equipp'd complete,
Made friends, hired books, and gave to eat;
If haply to regale my friends on,
My mother sent a haunch of ven'son,
I most respectfully entreated
The choicest company to eat it,
To wit, old Buzzard, Hawk, and Crow,
Item, Tom Thornback, Shark, and Co.
Attorneys all, as keen and staunch,
As e'er devour'd a client's haunch;
Nor did I not their clerks invite,
To taste said ven'son hash'd at night,
For well I knew that hopeful fry,
My rising merit would descry,
The same litigious course pursue,
And when to fish of prey they grew,
By love of food and contest led,
Would haunt the spot where once they fed.
Thus having, with due circumspection,
Form'd my professional connexion,
My desk with precedents I strew'd,
Turn'd writer, danced, or penn'd an ode,

Studied the Ton, became a free
And easy man of gallantry :
But if, while capering at my glass,
Or toying with some favourite lass,
I heard th' aforesaid Hawk a-coming,
Or Buzzard on the staircase humming,
At once the fair angelic maid,
Into my coal-hole I convey'd ;
At once, with serious look profound,
Mine eyes commercing with the ground,
I seem'd like one estranged to sleep,
" And fix'd in cogitation deep,"
Sat motionless, and in my hand I
Held my Doctrina Placitandi,
And though I never read a page in't,
Thanks to that shrewd well-judging agent,
My sister's husband, Mr. Shark,
Soon got six pupils, and a clerk,
Five pupils were my stint, the other
I took to compliment his mother ;
All round me came with ready money,
Like Hybla bees surcharged with honey,
Which, as they press'd it so genteelly,
And begg'd me to accept so freely,
Seem'd all so fond of Special Pleading,
And all so certain of succeeding,
I, whom am always all compliance,
As well to pupils as to clients,

Took as genteelly as they paid it,
And freely to my purse convey'd it;
That I might practically show,
And they in special manner know,
Ere they begin their Pleas to draw,
What an Assumpsit meant in law,—
To wit, for divers weighty sums
Of lawful cash, at Pleader's rooms,
By me, said Pleader, as was prudent,
Had and received to use of Student:
In short, I acted as became me,
And where's the Pleader that can blame me?
Not one of all the trade that I know,
E'er fails to take the ready rino,
Which, haply, if his purse receive,
No human art can e'er retrieve.
Sooner when Gallia's credit's flown
To some Utopian world unknown,
Astræa shall on earth remain,
The last of the celestial train,
To tender assignats at par,
Triumphant in the Champ de Mars,
And when their deep-laid projects fail,
And guillotines no more avail,
Her baffled Statesmen shall excise
Some new-found region in the skies,
And towering in an air balloon,
Pluck Requisitions from the moon;

Sooner the daring wights who go
Down to the watery world below,
Shall force old Neptune to disgorge,
And vomit up the Royal George,
Than he who has his bargain made,
And legally his cash convey'd,
Shall e'er his pocket reimburse,
By diving in a lawyer's purse.

MR. FEARNE.

"Mr. Fearne was a general scholar, he was profoundly versed in mathematics, chemistry, and mechanics. He had obtained a patent for dyeing scarlet, and had solicited one for a preparation of porcelain. A friend of the Reminiscent having communicated to an eminent gunsmith, a project of a musket, of greater power and much less size than that in ordinary use, the gunsmith pointed out to him its defects, and observed, that 'a Mr. Fearne, an obscure law-man, in Breame's Buildings, Chancery Lane, had invented a musket, which, although defective, was much nearer to the attainment of the object.'

"Mr. Fearne had composed a Treatise in the Greek Language, on the Greek Accents: another on the Retreat of the Ten Thousand. He mentioned to the Reminiscent, that, when he resolved to dedicate himself to the study of the law, he burned all his profane library, and wept over its

lames, and that the works which he most regretted, were, the Homilies of St. John Chrysostom to the People of Antioch, and the Comedies of Aristophanes." (*Butler's Reminiscences, p.* 126.)

Of the authenticity of the following anecdotes we have no means of assuring ourselves.

Fearne was so little ambitious of the favours of fortune, that when he could have commanded from 3000l. to 4000l. a year, by practice as a chamber counsel, he contracted his business within such a compass, that it might just yield him as much as might be sufficient for his wants, and no more. Amidst his professional pursuits, he had always a strong attachment to experimental philosophy, and to this he devoted the time which he denied to increase of business. He made some optical glasses upon a new construction, which have been reckoned improvements; he likewise constructed a machine for transposing the keys in music, and gave many useful hints in the dyeing of cottons and other stuffs. These he called his dissipations, and with some degree of truth, for they too often broke in upon his professional pursuits, and tempted him to give up more hours to laborious employments than his more beneficial prospects demanded, or was consistent with the natural strength of his constitution.

A very pleasing story is related of Fearne's

youth: it may be looked upon as the blossom of that independence and generosity which distinguished him through life. His father, besides being at great expense for his education, presented him on his entrance into the Temple, with a few hundred pounds, to purchase chambers and books. Yet generously overlooking these circumstances, he left his fortune, which was inconsiderable, to be equally partitioned between Fearne and a younger brother and sister. Fearne, sensible how much the family property had been wasted on his account, nobly refused to take advantage of the will, and gave up the whole residue to the other children. "My father," said he, "by taking such uncommon pains with my education, no doubt meant it should be my whole dependence, and if that won't bring me through, a few hundred pounds will be a matter of no consequence."

CHARLES THE SECOND'S VISIT TO LINCOLN'S INN.

We have already given an account of the Royal Visit to the Temple, (*Ante, p.* 63,) and we now present a narrative of his Majesty's reception and entertainment at Lincoln's Inn," extracted from

"*The Admittance Booke of*
"*Lincolne's Inne.*

"Wherein his most excellent Majestie, his Royall Highnesse the Duke of Yorke, his Highnesse Prince Rupert, and many Lords and honour-

ble Persons, have entered theire names with heire owne hands, the nine and twentieth Day of February, Anno Dom. 1671.

"A Narrative of the King's Majesties Reception and Entertaynment att Lincolne's Inne, the Nyne and Twentieth Day of February, One Thousand Six Hundred Seaventy One.

"Sir Francis Goodericke, Knt. one of his Maties. learned Councell att Law, and Sollicitor Generall to his Royall Highnesse the Duke of Yorke, being Reader of this Society of Lincolne's Inne for the Lent Reading, in the yeare One Thousand Six Hundred Seventy One, having invited the King, his Royall Highnesse, and Prince Rupert, and diverse of the nobilitie to dine in Lincolne's Inne Hall, on such day of his reading, as his Majestie shall make choise off; his Majestie was pleased to appoint Thursday, the Nyne and Twentieth of February, One Thousand Six Hundred Seventy One. And accordingly, that day his Majestie, together with his said Royall Highnesse, and his Highnesse Prince Rupert, being also attended by the Duke of Monmouth, the Duke of Richmond, the Earles of Manchester, Bath, and Anglesey, the Lord Viscount Halifax, the Lord Bishop of Ely, Lord Newport, Lord Henry Howard, and diverse others of great qualitie, came to Lincolne's Inne. His Majestie made his entrance through the garden, att the greate

gate opening into Chancery Lane, next Holborn, where Mr. Reader and the rest of the Benchers and Associates, waited his comeing, and attended his Majestie up to the Tarras Walke, next the field, and soe through the garden, the trumpets and kettle-drums from the leads over the higher bay-window in the middle of the garden building sounding all the while; and from the garden his Matie. went to the new councell chamber, the Barristers and Students in their gownes, standing in a rowe on each side between the garden and the councell chamber; after a little rest, his Majestie viewed the chappell, returning agayne to the councell chamber, from thence, as soon as his table (being placed upon the ascent att the upper end of the hall, and railed in,) was furnished, his Majestie was brought into the hall, where his Majestie sate under his canopy of state, being served by the Reader, as server, upon his knees with the towell, before he did eate, his Royall Highnesse sitting at the end of the table on his right hand, and Prince Rupert at the other end. The Dukes and Lords and other his Majestie's attendants of qualitie, after some short tyme of waiting, had leave from his Majestie to sitt down to dinner att tables prepared for them on each side of the hall. The Reader and some of the Benchers, to witt, Sir Thomas Beverley, Master of Requests to his Majestie, Sir Robert Atkins

Kat. of the Bath, all the tyme of his Majestie's dining, waiteing neere his Majestie's chaire, and four other of the Benchers, Mr. Day, Mr. Pedley, Mr. Stote, and Mr. Manby, with white staffes, waited as controlers of the hall, to keepe good order, and above fifty of the Barristers and Students, the most parte of them attending as waiters, and carrieing up his Majestie's meate, which was served upon the knee: the rest of the Barristers and Students waiteing upon the Lords att theire table. The three courses, wherein were exceeding great plenty and variety of dishes, and after them a most liberall banquett was served up by the said Barristers and Students, and delivered by them on theire knees att the King's table. The music, consisting of his Majestie's violins, playing all the tyme of dinner in the gallery, att the lower end of the hall; towards the end of dinner, his Majestie, to doe a transcendant honour and grace to this Society, and to expresse his most gracious acceptance of theire humble duty and affection towards him, was pleased to command the Booke of Admittances to be brought to him, and with his owne hand entred his royall name therein, most graciously condescending to make himselfe a member thereof, which high and extraordinary favour was instantly acknowledged by all the members of this Society then attending on his Majestie, with all possible joy, and received

with the greatest and most humble expressions of gratitude; itt being an example not precedented by any former King of this realme. His Royall Highnesse and Prince Rupert followed this great and highest example, as also the Dukes and other Lords, who, before his Majestie's riseing from dinner, borrowed gownes of the Students and put them on, and in those gownes waited on his Majestie, with which his Majestie was much delighted. And his Majestie, through his owne most obliging favour, vouchsafed to it, (haveing made himselfe more nearely and intimately concerned for the good of this Society,) was pleased himselfe to begin a health to the welfare thereof and to cause itt to be pledged in his owne presence, immediately gave the Reader leave to drinke his Majestie's health, and to begin to his Royall Highnesse. Then riseing from dinner, he was agayne attended to the new Councell-chamber, where he conferred the honour of knighthood on Mr. Nicholas Pedley and Mr. Richard Stote, two of the Benchers, who had in theire turns beene Readers of this house, as also upon Mr. James Buttler, one of the Barristers, and Mr. Francis Dayrell, one of the Students, that soe each degree and order of the Society might have a signal testimony of his Majestie's high favour. His Majestie, upon his departure, made large expressions of his most gracious acceptance of the

entertaynment, and returned his thanks to the Reader, and was pleased to signifie the great respect and esteeme he should ever have for the Society.

"The gentlemen of the horse guards, yeomen of the guards, and other inferior attendants, were countifully entertayned att the costs and charges also of the Reader. The gentlemen of the horse guards dined in the old Councell-chamber, the yeomen of the guards in Mr. Day's chamber, and the coachmen and lacqueys in the gardener's house, to all theire contentment.

"On Saturday following, Mr. Reader, Sir Robert Attkins, Sir Nicholas Pedley, and Sir Richard Stote, Benchers and Readers of Lincolne's Inne, waited on his Majestie att Whitehall, being conducted to his Majestie's presence by the Earle of Bath, and gave most humble thanks for that high and transcendant honour he had been pleased to vouchsafe to this Society, which was gratiously received by his Majestie. And he did the said Benchers the honour to kisse his hand."

THE LAW OF ASSAULT AND BATTERY AMONG THE ANGLO-SAXONS.

"The compensation allotted to personal injuries, arising from what modern lawyers would call assault and battery, was curiously arranged. Homer is celebrated for discriminating the wounds

of his heroes with anatomical precision. The Saxon legislators were not less anxious to distinguish between the different wounds to which the body is liable, and which, from their laws, we may infer that they frequently suffered. In their most ancient laws these were the punishments: The loss of an eye, or of a leg, appears to have been considered as the most aggravated injury which could arise from an assault; and was therefore punished by the highest fine, or 50 shillings.

"To be made lame was the next most considerable offence, and the compensation for it was 30 shillings.

"For a wound that caused deafness, 25 shillings.

"To lame the shoulder, divide the chine-bone, cut off the thumb, pierce the diaphragm, or to tear off the hair and fracture the skull, was each punished by a fine of 20 shillings.

"For cutting off the little finger, 11 shillings.

"For cutting off the great toe, or for tearing off the hair entirely, 10 shillings.

"For piercing the nose, 9 shillings.

"For cutting off the fore finger, 8 shillings.

"For cutting of the gold finger, for every wound in the thigh, for wounding the ear, for piercing both cheeks, for cutting either nostril, for each of the front-teeth, for breaking the jaw-bone, for breaking an arm, 6 shillings.

"For seizing the hair, so as to hurt the bone, for the loss of either of the eye-teeth, or the middle-finger, 4 shillings.

"For pulling the hair, so that the bone became visible, for piercing the ear, or one cheek, for cutting off the thumb-nail, for the first double-tooth, for wounding the nose with the fist, for wounding the elbow, for breaking a rib, or for wounding the vertebræ, 3 shillings.

"For every nail, (probably of the fingers,) and for every tooth beyond the first double-tooth, 1 shilling.

"For seizing the hair, 50 scættas.

"For the nail of the great toe, 30 scættas.

"For every other nail, 10 scættas.

"To judge of this scale of compensations by modern experience, there seems to be a gross disproportion, not only between the injury and the compensation in many instances, but also between the different classes of compensation. Six shillings is a very inconsiderable recompense for the pain and confinement that follows an arm or the jaw-bone broke; and it seems absurd to rank in punishment with these injuries the loss of a front-tooth. To value the thumb at a higher price than the fingers is reasonable; but to estimate the great-toe at twelve shillings, the little-finger at eleven shillings, the fore-finger at six shillings, the ring-finger at five shillings, and the middle-

finger at four shillings, seems a very capricious distribution of recompense. So the teeth seem to have been valued on no principle intelligible to us; a front tooth was atoned for by six shillings, an eye-tooth by four shillings, the first double-tooth three shillings, either of the others one shilling. Why to lame the shoulder should occasion a fine of twenty shillings, and to break the thigh but twelve shillings, and the arm but six, cannot be explained, unless we presume that the surgical skill of the day found the cure of the arm easier than that of the thigh, and that easier than the shoulder.

"Alfred made some difference in these compensations, which may be seen in his laws. He also appointed penalties for other personal wrongs.

"If any one bound a ceorle unsinning, he was to pay ten shillings; twenty if he whipped him; and thirty if he brought him to the pillory. If he shaved him in such a manner as to expose him to derision, he forfeited ten shillings, and thirty shillings if he shaved him like a priest, without binding him; but if he bound him, and then gave him the clerical tonsure, the penalty was doubled. Twenty shillings was also the fine if any man cut another's beard off. These laws prove the value that was attached to the hair and the beard in the Anglo-Saxon society.

"Alfred also enjoined, that if any man carry-

ing a spear on his shoulder pierced another, or wounded his eyes, he paid his were, but not a wite. If it was done wilfully, the wite was exacted if he had carried the point three fingers higher than the shaft. If the weapon was carried horizontally he was excused the wite." (*Turner's History of the Anglo-Saxons, vol.* iv. *p.* 306.)

MR. JUSTICE POWIS AND MR. YORKE,
(AFTERWARDS LORD HARDWICKE.)

"Mr. Yorke, by means of his own merit, and the countenance he was known to have from the court, made so rapid a progress in his profession, that he had soon as much business as he could well go through with, which gave occasion to Judge Powis to make him a compliment, that in the manner it was made, terminated more to Mr. Yorke's credit as a young man of ready wit, than to the Judge's good sense. The affair was this,—Mr. Justice Powis, who had been trying causes at some one of the assizes in the circuit he went, being at dinner, and several of the counsel with him, amongst whom was Mr. Yorke, took occasion to make Mr. Yorke some compliment, by telling him he could not but be greatly surprised at his having acquired so great a share of business for so young a man, and said to him, 'Mr. Yorke, I cannot well account for your having so much business, considering how short a time you

have been at the bar: I humbly conceive,' (continued the Judge,) 'you must have published some book, or are about publishing something, for look you, do you see, there is scarcely a cause before the court but you are employed in it, on one side or other; I should, therefore, be glad to know, Mr. Yorke, whether this is the case?' Such a curious way of accounting for Mr. Yorke's run of business, could not but force a smile from him, and it determined him to make the Judge such a reply as might put an end to so fulsome a compliment; he, therefore, told the Judge, he had, indeed, some thoughts of publishing a book, but that he had made no progress in it as yet: at which the Judge, pleasing himself for having made so happy a discovery, became importunate with Mr. Yorke to let him know the subject of this book; which put him upon telling the Judge, that he had thoughts of publishing Coke upon Littleton, in verse, but that he had gone but a very little way in it; this, however, tickled the Judge's curiosity still more; and telling Mr. Yorke, that it was something so new, and must be so entertaining, he begged him to oblige him with the recital of a few of the verses; when Mr. Yorke, finding the Judge would not drop the subject, bethought himself he could not get rid of it better than by giving, by way of a specimen, something in the Judge's own words, and introducing the

phrases he himself was in the habit of making use of upon all occasions, let the subject be what it would. Therefore, accompanying what he intended to say with some excuses for complying with the Judge's request, Mr. Yorke began with reciting, as he pretended, the following verses: viz.

"He that holdeth lands in fee,
Need neither to quake nor to shiver;
I humbly conceive, for look, do you see,
They are his, and his heirs for ever."*

"Such a specimen as this, it may easily be conceived, was enough to satisfy the Judge; but, however that might be, the rest of the company could not but be under some difficulty to refrain from laughter: and it seems at least to prove, that Mr. Yorke had a ready wit, and a good deal of pleasantry about him." (*Sketches of the Life of Philip, Earl of Hardwicke, p.* 56.)

"Sir Thomas More, when the counsel of the party pressed him for a longer day to perform the decree, said, 'Take Saint Barnaby's day, which is the longest day in the year.' Now Saint Barnaby's day was within a few days following." (*Bacon's Apothegms.*)

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* This appears to be the original of Cowper's poetical version of Co. Litt. (*See ante, vol.* i. *p.* 101.)

THE PUBLIC LIFE OF SIR EDWARD COKE.

Amongst the many distinguished lawyers whose names are connected with the political history of their times, few, perhaps none, have merited so well of their country as Sir Edward Coke. In estimating the public life of this celebrated man, it must be remembered that he lived at a period of our history when the virtue of civil courage, as applied to political conduct, was scarcely known amongst us, and when even the highest and most powerful subjects submitted without murmuring to every demonstration of the royal will. There, perhaps, never was a period in our annals when the Court attempted to exercise a more unqualified authority than during the reign of James I. The austere dominion of Henry VIII. who was styled, and not without reason, *metuendissimus*, the cruelties of Mary, and the unquestioned submission which Elizabeth ever required from all ranks of her people, had raised the royal prerogative in the estimation of the monarch, and, indeed, of the country, to a very high pitch, insomuch that the pretensions of James I. which now appear to us so wildly extravagant (*see vol.* ii. *p.* 256,) were probably at that period regarded by most persons as just expositions of the royal authority. The nobility, so far from endeavouring to offer any resistance to these unreasonable claims of the

SIR EDWARD COKE.

crown, seem to have considered themselves wholly dependant upon Court favour, and submitted without murmuring to all the injustice and caprice with which the monarch chose to harass them; while the churchmen displayed a spirit of servility unequalled amongst any other class of citizens. Amongst the Commons alone were to be found some of those resolute spirits who watched with jealousy and distrust the proceedings of the Court, and who anxiously sought to raise some firmer bulwarks around the rights and liberties of their countrymen.

Thrown during times like these into some of the most arduous and responsible offices of the state, Sir Edward Coke had to act a part which required the firmest integrity and the most skilful address. The tide of popular opinion was just beginning to set in against the encroachments of the prerogative, and the crown, on the other hand, anxiously sought every means to resist a torrent which, should it once get head, was but too likely to sweep away the throne in its course. In strengthening the royal hands, the advantages which might be derived from a submissive and well-disposed Bench, were not overlooked. In several cases in which the interests of the Court came before the judges, means were taken to ensure the desired decision, and the power of removing them from their seats was more than

once exercised with effect during the reign of James I.

The political life of Sir Edward Coke can scarcely be said to have commenced before his elevation to the Bench, which took place in the year 1606, when he was created Chief Justice of the Common Pleas. In this situation it soon became necessary for him to adopt a definite line of conduct on some of the most important questions of public policy. The judges at that period were very frequently consulted upon the legality and propriety of state measures, a practice which arose out of their supposed character of King's Counsellors. Upon these occasions the opinions of Sir Edward Coke were necessarily brought forward, and we fortunately possess sufficient memorials of them to assist us in determining their peculiar character. In the twelfth part of the Reports, (a volume which was not published until after Coke's death,) we find many cases recorded which throw considerable light on his political conduct. Some of the most remarkable of these cases relate to the prohibitions which had been issued by the Courts at Westminster against the ecclesiastical jurisdictions. The following case, under the date of 5 Jac. 1. (two years after Coke's elevation to the Bench) presents an admirable picture of all the parties concerned in it.

"Note; upon Sunday, the 10th of Novr. in

this same term, the King, upon complaint made to him by Bancroft, archbishop of Canterbury, concerning prohibitions, the King was informed, that when the question was made of what matters the ecclesiastical judges have cognizance, either upon the exposition of the statutes concerning tithes, or any other thing ecclesiastical or upon the statute 1 Eliz. concerning the High Commission, or in any other case in which there is not express authority in law, the King himself may decide it in his royal person, and that the judges are but the delegates of the King, and that the King may take what causes he shall please to determine, from the determination of the Judges, and may determine them himself. And the Archbishop said, that this was clear in Divinity, that such authority belongs to the King by the word of God in the Scriptures. To which it was answered by me, in the presence and with the clear assent of all the Justices of England and Barons of the Exchequer, that the King in his own person cannot adjudge any case, either criminal, as treason, felony, &c. or betwixt party and party concerning his inheritance, chattels, goods, &c. but this ought to be determined and adjudged in some Court of Justice, according to the law and custom of England * * *. And it was greatly marvelled that the Archbishop durst inform the King that such absolute power and

authority, as is aforesaid, belonged to the King by the word of God. * * * Then the King said, that he thought the Law was founded upon reason, and that he and others had reason, as well as the Judges. To which it was answered by me, that true it was, that God had endowed his Majesty with excellent science and great endowments of nature, but that his Majesty was not learned in the laws of his Realm of England; and causes which concern the life, or inheritance, or goods, or fortunes of his subjects, are not to be decided by natural reason, but by the artificial reason and judgment of the law, which law is an act which requires long study and experience before that a man can attain to the cognizance of it, and that the law was the golden met-wand and measure to try the causes of the subjects, *and which protected his Majesty in safety and peace;* with which the King was greatly offended, and said that then he should be under the law, which was treason to affirm, as he said; to which I said, that Bracton saith, *Quod Rex non debet esse sub homine, sed sub Deo et Lege.*" (12 *Rep.* 64.)

We have another account of this singular conference preserved in a familiar letter of the period. "On Sunday, before the King's going to Newmarket, my Lord Coke and all the Judges of the common law were before his Majesty to answer some complaints of the civil lawyers, for the ge-

neral granting of prohibitions. I heard that the Lord Coke, amongst other offensive speech, should say to his Majesty, that his Highness was defended by the law: at which saying, with other speech then used by the Lord Coke, his Majesty was very much offended, and told him he spake foolishly, and said he was not defended by his laws, but by God; and so gave the Lord Coke, in other words, a very sharp reprehension, both for that and other things; and withal told him that Sir Thomas Compton (the Judge of the Admiralty Court) was as good a man as Coke." (*Lodge's Illustrations, vol.* iii. *p.* 364.)

In the same year Coke was again called upon to give his opinion on a most important constitutional question, as to the nature and extent of the King's proclamation. The practice of regulating and even altering the law by these royal Ordinances had been carried to a great extent by James I. "The people," observes Rapin, "could not see without grief such a number of proclamations, which seemed to suppose that the King's will was the sole rule and measure of the government." What could be more monstrous than the proclamation issued by James, on calling his first parliament, in which he threatened the cities and boroughs with a forfeiture of their franchises, and the parties elected with imprisonment, unless the requisitions of his royal edict were complied with?

To resist these arbitrary notions required no small portion of resolution and firmness, and fortunately those qualities were possessed, in an eminent degree, by Sir Edward Coke. An occasion soon occurred which called for the exercise of them, and we have an account of the transaction in Coke's own words.

"*Memorandum*, that upon Thursday, 20 Sept. 8 Regis Jacobi, I was sent for to attend the Lord Chancellor, Lord Treasurer, Lord Privy Seal, and the Chancellor of the Dutchy; there being present the Attorney, the Solicitor, and Recorder. And two questions were moved to me by the Lord Treasurer; the one, if the King, by his proclamation, may prohibit new buildings in and about London, &c.; the other, if the King may prohibit the making of starch of wheat; and the Lord Treasurer said, that these were preferred to the King as grievances, and against the law and justice. And the King hath answered, that he will confer with his Privy Council, and his Judges, and then he will do right to them. To which I answered, 1st. That these questions were of great importance; 2nd. That they concerned the answer of the King to the body, viz. to the Commons of the House of Parliament; 3rd. That I did not hear of these questions until this morning, at nine of the clock, for the grievances were preferred and the answer made when I was in my circuit. And

lastly, both the proclamations, which now were showed, were promulgated, An. 5 Jac. after my time of Attorneyship: and for these reasons I did humbly desire them that I might have conference with my brethren, the judges, about the answer of the King, and then to make an advised answer, according to law and reason. To which the Lord Chancellor said, that every precedent had first a commencement, and that he would advise the judges to maintain the power and prerogative of the King; and, in cases in which there is no authority and precedent, to leave it to the King, to order in it according to his wisdom, and for the good of his subjects, or otherwise the King would be no more than the Duke of Venice: and that the King was so much restrained in his prerogative, that it was to be feared the bonds would be broken; and the Lord Privy Seal said, that the physician was not always bound to a precedent, but to apply his medicine according to the quality of the disease: and all concluded that it should be necessary at that time to confirm the King's prerogative with our opinions, although that there were not any former Precedent or Authority in Law, for every precedent ought to have a commencement.

"To which I answered, That true it is that every precedent hath a commencement, but when authority and precedent is wanting, there is need of

great consideration, before that any thing of novelty shall be established, and to provide that this be not against the law of the land: for I said, that the King cannot change any part of the common law, nor create any offence by his proclamation, which was not an offence before, without parliament. But at this time I only desired to have a time of consideration and conference with my brothers, for Deliberandum est diu, quod statuendum est semel; to which the solicitor said, that divers sentences were given in the Star Chamber upon the proclamation against building; and that I myself had given sentence in divers cases for the said proclamation. To which I answered, that precedents were to be seen, and consideration to be had of this upon conference with my brethren, for that, melius est recurrere, quam male currere; and that indictments conclude, contra leges et statuta, but I never heard an indictment to conclude, contra regiam Proclamationem. At last my motion was allowed, and the lords appointed the two Chief Justices, Chief Baron, and Baron Altham to have consideration of it."—The result of this conference was a resolution "that the King, by his proclamation, cannot create any offence which was not an offence before." "Also it was resolved *that the King hath no prerogative but that which the law of the land allows him.*" (12 *Rep.* 74.) A resolution of the

very highest consequence at this period of royal assumption. There is little doubt that the constitutional interpretation of the Law upon this occasion proceeded from the influence of Sir Edward Coke.

In the succeeding year (1612) new complaints were made to the King by the ecclesiastics, upon the frequent issuing of prohibitions out of the Court of Common Pleas to the High Commissioners, whose violent and illegal proceedings appear particularly to have excited the indignation of Coke. Shortly before Trinity Term, in that year, all the judges were summoned before the Council, where they found Abbott, the Archbishop of Canterbury, two Bishops, and several civilians, prepared to dispute the propriety of the proceedings adopted by the Courts of common law. After "great disputation" between Coke and the Archbishop, the Council appears to have been adjourned without coming to any determination; but in the course of the ensuing term, the Justices of the Common Pleas were again cited to appear at the Council table, on which occasion they unanimously expressed their adherence to their former resolutions with regard to the prohibitions. The Court found little satisfaction in these proceedings, and therefore, on another day, summoned the other judges also to attend. "And when we were all assembled," says Coke, "we of the

Common Pleas were commanded to retire, for that, as the Lord Treasurer said, we had contested with the King." The result of these conferences, in which Coke bore so distinguished a part, was, that James promised to "reform the High Commission in divers points," to the great grief of the Lord Treasurer, who said, "that the principal feather was plucked from the High Commission; and nothing but stumps remained." The conclusion of this singular and important case is highly characteristic of Coke's resolute mode of dealing with his royal master—"but I said to the King, that when we, the Justices of the Common Pleas, see the Commission newly reformed, we will, as to that which is of right, seek to satisfy the King's expectation." (12 *Rep.* 84.)

The Court, finding Coke thus obstinately bent upon opposing these arbitrary proceedings, attempted to corrupt him, by bestowing upon him a share of the illegal power which was vested in the High Commissioners. In conjunction with some others of the Judges he was named in the Commission; "and I was," says he, "commanded to sit, by force of the said Commission, which I refused for these causes." He then enumerates his objections to the Commission, "which contained three great skins of parchment, and divers points against the laws and statutes of England." "All the time the long commission was in reading,"

adds Coke, "I stood and would not sit, as I was requested by the Archbishop and the lords, and so, by my example, did all the rest of the Justices." (12 *Rep.* 88.)

Amongst the other unconstitutional measures which distinguished the reign of James I. was the practice of consulting the Judges on matters which it was probable might afterwards be brought before them judicially. An instance of this kind occurred in the case of one Peacham, a Minister, in whose possession was found a sermon containing, as it was said, various treasonable passages. The Court was desirous of obtaining from the Judges an opinion that this was treason, and with this view Bacon, then Attorney-General, used all his art to prevail upon the Chief Justice of the Common Pleas, to deliver in *his* opinion with that of his brothers. An application like this, so contrary to Coke's excellent maxim, *that he was a Judge in a Court and not in a Chamber*, was resisted by him with his usual resolution, and the Attorney-General almost despaired of prevailing upon him—"neither am I wholly" says he, in a Letter to the King, "without hope, that my Lord Coke himself, when I have, in some dark manner, put him in doubt that he shall be left alone, will not continue singular." Notwithstanding his objection to this "auricular taking of opinions," Coke was at last prevailed upon to

transmit an answer to the question propounded to him. How far he was justified in so doing is a question of difficult determination, more especially as we are ignorant of the nature of his answers. We only know that they were not altogether pleasing to Sir Francis Bacon, "who was glad to send them in the Chief Justice's handwriting for his own discharge." (*See Peacham's Case*, 2 *How. St. Tr.* 870.)

We have now to notice a transaction which has been thought to throw suspicion on the integrity of Sir Edward Coke's political character, but which, when properly understood, will, perhaps, be found to leave it unsullied. In the year 1615, Mr. Oliver St. John published a paper against a benevolence which had been collected under the authority of Letters from the Privy Council, and for this offence an information was exhibited against him in the Star Chamber. According to Bacon, Sir Edward Coke gave it as his opinion, that the King could not so much as move any of his subjects for a benevolence, but afterwards retracted this opinion before the Star Chamber, and there delivered the law strongly in favour of the benevolence; "I would," adds Bacon, "he had done it timely." Now it appears from the case under the title of "Exaction of Benevolence," in Coke's 12th Report, that he had carefully consulted the legal authorities on the subject, the

result of which seems to have left an impression, that a free grant to the crown without coercion is lawful, and there is little doubt that it was of this gratuitous benevolence only that Coke spoke in the Star Chamber. The only statute which at this period existed against the taking of a benevolence was that of 1 Ric. 3. c. 2, from the preamble of which it appears, as Coke informs us, that the benevolence there intended was a benevolence against the will and liberty of the subject, but that a free will offering was not restrained. (12 *Rep.* 120.) Even the petition of right, which was a subsequent enactment, extended only to compulsive benevolences. At length, in the reign of Charles II. (*see* 13 *C.* 2. *c.* 4,) not only were compulsive benevolences declared to be illegal, but all commissions from the crown to solicit and receive voluntary gifts, were also declared to be unconstitutional. Sir Edward Coke, however, doubtless conceiving himself to be bound by the law as it then stood, gave his opinion in favour of a voluntary benevolence; and in so doing cannot in justice be said to have infringed in any manner upon his political integrity. It was his duty to declare the law as he found it, a duty which he appears to have performed on this as upon other occasions, with firmness and decision. (*See the Case of Mr. Oliver St. John, and Mr.*

Hargrave's excellent Note, 2 *State Trials*, 899.—12 *Rep.* 119.)

The celebrated case of Commendams, which occurred in the year 1616, and in which Sir Edward Coke played so conspicuous a part, has been already noticed, (*see ante, vol.* i. *p.* 44.) This was soon afterwards followed by the quarrel between Coke and Lord Ellesmere, respecting the jurisdiction of the Courts of Common Law and Equity; but, as Coke was not on this occasion actuated by political motives, a more particular narrative of that transaction is not called for here. It is, however, proper to notice it, as it was probably one of the causes which subsequently led to the disgrace of the Chief Justice. In the same year (1616) he was called before the Privy Council, where several charges were preferred against him. First he was accused of malversation in his office of Attorney-General—a charge which was never substantiated. Secondly, of using words of high contempt on the Bench, an accusation which appears to have originated in the quarrel with the Court of Chancery.—Thirdly, of indecent behaviour before his Majesty, by which was meant his honourable conduct in the affair of Commendams. For these alleged offences his sentence was,—1. That he should be sequestered from the Council Table until his Majesty's further pleasure should b known. 2ndly. That he should forbear to

ride his Summer Circuit as Justice of Assise; and, lastly, that during the leisure thus afforded him he should review his books of Reports, which had in various points given displeasure to his Majesty. (*See the Biog. Brit. Article, Coke.*)

The conduct of Sir Edward Coke on this sentence being announced to him was not altogether that which might have been expected from a man of his firm and unbending mind. Something, however, must be conceded to the spirit of the time, to which no man is, perhaps, altogether superior; and which, at this period, sanctioned a degree of servile submission to the will of the Court, which, at the present day, we can scarcely suppose to have existed. On hearing the sentence of the Council Table, Coke "did in all humility prostrate himself to his Majesty's good pleasure—acknowledged the decree to be just, and proceeding rather from his Majesty's exceeding mercy than from his justice—gave humble thanks to their lordships for their favours and goodness towards him, and hoped that his behaviour for the future time, should be such as should deserve their lordships' favour." But even this submission could not appease the anger of Coke's enemies; and in the month of November, he was deprived of his office of Chief Justice, which was bestowed upon Sir Henry Montague. This last blow entirely conquered his fortitude, and he is

said to have received the *supersedeas* "with dejection and tears."

The causes which led to his dismissal have been already adverted to, and a reference to them will also be found in the speech of the Lord Chancellor to the new Chief Justice, (*see Moor's Rep.* 827,) which is, in fact, little more than a catalogue of his predecessors' delinquencies.

The influence and abilities of Sir Edward Coke were too well known to be long neglected; and accordingly, shortly after his disgrace, he was again restored to some degree of favour, and resumed his seat at the Council Table. He was appointed a commissioner under several commissions chiefly relating to revenue matters, and appears, during this period, to have rendered himself very useful to the country. As James became poorer, the necessity of calling a parliament became more urgent, and Coke was consulted as to the measures most fit to be pursued at this hazardous conjuncture. It is probable that the advice which he gave was neglected by the Court, for on the meeting of the parliament, he took a decided part against the measures of the Crown. On the 6th of February, 1620, an important debate took place in the House, on liberty of speech, the increase of popery, and other grievances, upon which Coke expressed himself with great warmth, declaring at the same time, (a bold declaration at

that period,) that proclamations against the tenor of acts of parliament were void. He again offended the Court by the part which he took in a question of breach of privilege, which occasioned a prorogation of the parliament, and soon afterwards he was committed to the Tower. The parliament being dissolved, Sir Edward was summoned once more before the Council, where he was accused of having suppressed some papers relative to the trial of the Earl of Somerset, in which he had taken a very active part. The charge, however, was not pressed, the King contenting himself with dismissing him a second time from his office of Privy Counsellor. Upon this occasion his Majesty is said to have made use of some expressions with regard to him, the application of which, when we review his life, it is very difficult to understand: *that he was the fittest instrument for a Tyrant that ever was in England.* After this period he was never again reconciled to the Court.

As the struggle between the Court and the Country approached its crisis, Sir Edward Coke was no idle spectator of the course of events. Having been returned, in the year 1628, for the county of Bucks, he acted a very prominent part in the House of Commons, supporting its privileges and arguing warmly in defence of the liberty of the subject. In this parliament he performed

the most signal service to the country which has perhaps ever proceeded from individual exertion, in proposing and framing the celebrated PETITION OF RIGHTS. He likewise distinguished himself greatly by vindicating the right of the House of Commons to proceed against any subject, how high soever, and boldly named the Duke of Buckingham as the principal cause of the public grievances, although he appears previously to have entertained a different opinion of the Duke's character. An account of the speech which he delivered on this occasion, and during which he is said to have been interrupted by his tears, has been preserved, and is strongly tinged with his peculiar manner.

During a warm debate, a member having alluded to the Duke of Buckingham, the Speaker rose and said, "There is a command upon me that I must command you not to proceed." Upon this a deep silence ensued, after which the House resolved itself into a committee to consider what was fit to be done; and ordered that no man should leave the House on pain of being sent to the Tower. The Speaker, however, desiring to withdraw, had leave to do so; and, Mr. Whitby being in the chair, Sir Edward Coke spoke to the following effect.—"We have dealt with that duty and moderation that never was the like, *rebus sic stantibus*, after such a violation of the liberties of

the subject; let us take this to heart. In 30 Ed. III. were they then in doubt in parliament to name him that misled the King? They accused John de Gaunt, the King's son, and Lord Latimer and Lord Nevil, for misadvising the King, and they went to the Tower for it. Now, when there is such a downfal of the state, shall we hold our tongues? How shall we answer our duties to God and men? 7 Hen. IV. Parliam. rot. No. 31, 32, and 11 Hen. IV. No. 13; there the Council are complained of, and are removed from the King; they mewed up the King, and dissuaded him from the common good. And why are we now retired from that way we were in? Why may we not name those that are the cause of all our evils? In 4 Hen. III. and 27 Ed. III. and 13 Rich. II. the parliament moderateth the King's prerogative, and nothing grows to abuse, but this house hath power to treat of it. What shall we do? Let us palliate no longer; if we do, God will not prosper us. I think the Duke of Buckingham is the cause of all our miseries; and till the King be informed thereof we shall never go out with honour, or sit with honour here. That man is the grievance of grievances; let us set down the causes of all our disasters, and all will reflect upon him." On the dissolution of this parliament, which took place in March, 1628, Coke retired from public life. This imperfect

swayed by any respect or deference to another man's opinion, and by this means it hath happened sometimes, that when all the barons of the Exchequer had delivered their opinions, and agreed in their reasons and arguments, yet he coming to speak last, and differing in judgment from them, hath expressed himself with so much weight and solidity, that the barons have immediately retracted their votes and concurred with him He hath sat as judge in all the courts of law, and in two of them as chief; but still, wherever he went, all business of consequence followed him, and no man was content to sit down by the judgment of any other court, till the case was brought before him, to see whether he were of the same mind; and his opinion being once known, men did readily acquiesce in it, and it was very rarely seen, that any man attempted to bring it about again, and he that did so, did it upon great disadvantages, and was always looked upon as a very contentious person; so that what Cicero says of Brutus, did very often happen to him, *etiam quos contra statuit æquos placatosque dimisit.* Nor did men reverence his judgment and opinion in courts of law only, but his authority was as great in courts of equity, and the same respect and submission was paid to him there too; and this appeared not only in his own court of equity in the Exchequer-chamber, but in the

Chancery too, for thither he was often called to advise and assist the Lord Chancellor, or Lord Keeper for the time being; and if the cause were of difficult examination, or intricated and entangled with variety of settlements, no man ever showed a more clear and discerning judgment: if it were of great value, and great persons interested in it, no man ever shewed greater courage and integrity in laying aside all respect of persons: when he came to deliver his opinion, he always put his discourse into such a method, that one part gave light to the other, and where the proceedings of Chancery might prove inconvenient to the subject, he never spared to observe and reprove them, and, from his observations and discourses, the Chancery hath taken occasion to establish many of those rules by which it governs itself at this day.

"He did look upon equity as a part of the common law, and one of the grounds of it, and therefore, as near as he could, he did always reduce it to certain rules and principles, that men might study it as a science, and not think the administration of it had any thing arbitrary in it. Thus eminent was this man in every station; and into what court soever he was called, he quickly made it appear, that he deserved the chief seat there.

"As great a lawyer as he was, he would never suffer the strictness of law to prevail against con-

science; as great a chancellor as he was, he would make use of all the niceties and subtilties in law, when it tended to support right and equity. But nothing was more admirable in him than his patience; he did not affect the reputation of quickness and dispatch, by a hasty and captious hearing of the counsel; he would bear with the meanest, and gave every man his full scope, thinking it much better to lose time than patience. In summing of an evidence to a jury, he would always require the bar to interrupt him if he did mistake, and to put him in mind of it, if he did forget the least circumstance; some judges have been disturbed at this as a rudeness, which he always looked upon as a service and respect done to him.

"His whole life was nothing else but a continual course of labour and industry; and when he could borrow any time from the public service, it was wholly employed either in philosophical or divine meditations, and even that was a public service too, as it proved; for they have occasioned his writing of such treatises as are become the choicest entertainments of wise and good men, and the world hath reason to wish that more of them were printed. He that considers the active part of his life, and with what unwearied diligence and application of mind he dispatched all men's business which came under his

care, will wonder how he could find any time for contemplation; he that considers again the various studies he past through, and the many collections and observations he hath made, may as justly wonder how he could find any time for action; but no man can wonder at the exemplary piety and innocence of such a life, so spent as this was, wherein, as he was careful to avoid every idle word, so 'tis manifest he never spent an idle day. They who came far short of this great man, will be apt enough to think, that this is a panegyric, which, indeed, is a history, and but a little part of that history, which was, with great truth, to be related of him: men who despair of attaining such perfection, are not willing to believe that any man else did ever arrive at such a height.

"He was the greatest lawyer of the age, and might have had what practice he pleased; but though he did most conscientiously affect the labours of his profession, yet, at the same time, he despised the gain of it; and of those profits which he would allow himself to receive, he always set apart a tenth penny for the poor, which he ever dispensed with that secrecy, that they who were relieved seldom or never knew their benefactor. He took more pains to avoid the honours and preferments of the gown, than others do to compass them. His modesty was beyond all example; for where some men, who never attained

to half his knowledge, have been puffed up with a high conceit of themselves, and have affected all occasions of raising their own esteem by depreciating other men; he, on the contrary, was the most obliging man that ever practised: if a young gentleman happened to be retained to argue a point in law, where he was on the contrary side, he would very often mend the objections, when he came to repeat them, and always commended the gentleman if there was any room for it, and one good word of his was of more advantage to a young man, than all the favour of the court could be."

LORD CHANCELLOR BATHURST.

The following severe character of this nobleman forms part of the "Strictures on the Lives and Characters of the most eminent Lawyers of the present Day." (1790.)

"If general report be entitled to any credit, we may boldly write down, that the Earl of Bathurst became a great character per force,—he was nursed in a political hot-bed, and raised *per fas aut nefas*. Nothing less than the same necessity introduces his Lordship's name in the same page with those illustrious personages, which it is the purpose of this volume to portray.

"The Earl of Bathurst, as the register proclaims, is descended of an illustrious family; his

father was the much celebrated nobleman whom Pope, in his tuneful numbers, so highly, so elegantly, and so justly panegyrised; and Swift, in spite of his satirical vein, and almost in contradiction of his nature, condescended to praise. The old earl was commonly known under the accepted description of one of Queen Anne's Peers, who, like some of later date, sprung up in an abundant and unexpected crop, in a single night. If, however, they had all owned the same pretensions with his Lordship, we should have supposed that the batch of new-made lordlings would have escaped a general name, which oftener originated from contempt than a more ennobled principle.

"The present Earl of Bathurst, by the force of natural conclusion, must be understood to have received an education liberal as his birth; for he who is fond of the learned, by an undeniable axiom, must be equally attached to the arts which they profess.

"At a very early period he was endued with the *toga forensis*, and, much sooner than is common, exchanged the rough bombazeen for the more light and silken robe, that is the sure indication of professional advancement. He travelled all the stages of the law with a rapidity that great power and interest can alone, in the same degree, accelerate. His professional character in his

several official situations, was never prominently conspicuous, till that wonderful day, when he leapt at once into the foremost seat of the law.

"Every individual member of the profession stood amazed; but time, the great reconciler of strange events, conciliated matters even here. It was seen that the noble Earl was called upon from high authority, to fill an important office, which no other could be conveniently found to occupy. Lord Camden had retired, without any abatement of rooted disgust, far beyond the reach of persuasion to remove. The great Charles Yorke, the unhappy victim of an unworldly sensibility, had just resigned the seals and an inestimable life together; where could the eye of adminis-tion be directed? The rage of party ran in torrents of fire. The then Attorney and Solicitor General were at the moment thought ineligible,—perhaps too, the noble Lord, then at the head of affairs, and who was yet untried, had a policy in not forwarding transcendent abilities to obscure his own. Every such apprehension vanished upon the present appointment. This man could raise no sensation of envy as a rival, or fear as an enemy.

"He was made Chancellor in 1771, and on retiring from his situation in 1778, to make way for the present legal Atlas, was appointed Lord President of the Council.

account of his character as a patriot cannot be better concluded than in the words of a modern historian. "It is impossible," says Mr. Godwin, in his History of the Commonwealth, "to review these proceedings without feeling that the Liberties of England are to no man so deeply indebted as to Sir Edward Coke."

CHARACTER OF SIR M. HALE.

"I shall now," says Burnet, in his Life of Hale, "conclude all that I shall say concerning him, with what one of the greatest men of the profession of the law sent me as an abstract of the character he had made of him, upon long observation and much converse with him." (*Life of Sir M. Hale, p.* 86.)

"He would never be brought to discourse of public matters in private conversation; but in questions of law, when any young lawyer put a case to him, he was very communicative, especially while he was at the bar; but when he came to the bench, he grew more reserved, and would never suffer his opinion, in any case, to be known, till he was obliged to declare it judicially; and he concealed his opinion in great cases so carefully, that the rest of the judges in the same court could never perceive it; his reason was, because every judge ought to give sentence according to his own persuasion and conscience, and not to be

SIR MATHEW HALE.

did not altogether accord with the prerogative notions of Roger North, who does not treat him with much respect in the Life of his Brother, the Lord Keeper. He acknowledges, however, that he was "the best old book lawyer of his time;" a fact which we may easily credit, when we are told, that "he had such a relish of the Old Year Books, that he carried one in his coach to divert his time in travel, and said, he chose it before any comedy." (*Life of North, vol.* i. *p.* 26.) In the same volume we have also the following anecdotes of the Sergeant.

"Mr. Sergeant Maynard had a mind to punish a man who had voted against his interest in a borough in the West, and brought an action against him for scandalous words, spoke at a time when a member to serve in the House of Commons for that borough was to be chosen. And, after his great skill, he first laid his action in the County of Middlesex; and that was by virtue of his privilege, which supposes a Sergeant is attendant on the Court of Common Pleas, and not to be drawn from the county where the court sat. And then, in the next place, he charged the words in Latin, that, if he proved the effect, it would be sufficient, whereas, being in English, they must prove the very words to a tittle, and those were, a long story that used to be told of Mr. Noy, and all the cock lawyers in the West, and this was

tried before his Lordship at the nisi prius, for the Common Pleas, for Middlesex. The witness telling the story as he swore the defendant told it, said, that a client came to the Sergeant, and gave him a basket of pippins, and every pippin had a piece of gold in it.—' Those were golden pippins,' quoth the Judge. The Sergeant began to puff, not bearing the jest; so the witness went on, and then said he, the other side came and gave him a roasting pig, (as it is called in the West,) and, in the belly of that, there were fifty broad pieces. ' That's good sauce to a pig,' quoth the Judge again. This put the Sergeant out of all patience, and speaking to those about him, ' This,' said he, ' is on purpose to make me ridiculous.' This story being sworn, the Judge directed the Jury to find a verdict for the Sergeant; but in the court, the judgment was arrested, because the words were but a land story, and went as mere merriment over ale, without intent to slander. Such bitterness flows from the sour spirits of old pretended republicans. It had been well if no other instances, but such as this, were extant to shew it. This happened when I attended, and so know the matter to be as above literally true. But it is hard to believe that such a poor revenge could have been put into act by so great a man. And I should almost distrust myself, if I had not been partaker of a more wretched come off with the same person;

which I shall relate, conceiving it to be full as material to shew little things of great men, as great things of little men. One afternoon at the nisi prius court of the Common Pleas, in Westminster Hall, before the Judge sat, a poor, half-starved old woman, who sold sweet-meats to school-boys and footmen, at the end of the bar, desired the Sergeant to pay her two shillings for keeping his hat two terms. She spoke two or three times, and he took no notice of her; and then I told the Sergeant, the poor woman wanted her money, and I thought he would do well to pay her. The Sergeant fumbled a little, and then said to me, 'Lend me a shilling.' 'Ay, with all my heart,' quoth I, 'to pay the poor woman.' He took it and gave it her; but she asked for another. I said I would lend him that also, to pay the woman. 'No, don't, boy,' (said he,) 'for I never intend to pay you this.' And he was as good as his word; for however he came off with the woman, having been, as they say, a wonderful charitable man; I am sure he died in my debt. But in this manner, (as I guess he intended,) I stood corrected for meddling.

"This great man, as I must call him, since his natural and acquired abilities, and the immense gains he had by practice, justly entitle his name to that epithet, was an anti-restauration lawyer. In 1684, I heard him say in the Court of Chan-

cery, of a cause then at hearing, that he was a counsel in that cause in the year 1643. His name is in Cook's Reports, in 3 Car. His actions in the rebellious times, made the act of indemnity smell sweet. And afterwards, he had the cunning to temporise, and get to be made the King's eldest Sergeant, but advanced no farther. His lordship must needs have much conversation, as well as intercourse in business, with this eminent practiser in the law, but as in other cases of adverse party men, so here, there could be no cordial friendship between them, but a fair and reasonable correspondence there always was. The Sergeant ever took in with proceedings that maligned his lordship; but he never outwent discretion, so far as some did, to appear directly and nominally against him, which must have certainly rescinded all kind of correspondence. When his lordship sat in the chair of the Common Pleas, he practised under him, and had always the respect due to his known abilities. But though the Sergeant never failed to conform to all things required of him in public, as oaths, and tests, &c. yet, for all that, he continued a favourite in the presbyterian congregations; and is at this day among them extolled as a saint, and his wonderful charities, and other good works, related; and to give him his due, he was, to his last breath, at the bottom, true as steel to the principles of the late times,

when he first entered upon the stage of business. And whatever we, that were frequently at his elbow, knew of his saint-like administration of himself and his wealth, it is fit to be silent, because we should not speak ill of the dead. And, in that tendency, I shall only observe farther of him, that he practised before his lordship in all the King's courts where he had sat as judge, and, being an artful, as well as learned, lawyer, would lay notable snares, but when discovered, never persisted, but sat down; and for the decorum of bar practice of the law, was an excellent pattern, and held a fair correspondence and used a decent respect towards his lordship all his time." (*Life of Lord Guilford, vol.* i. *p.* 220.)

FESTIVAL AT THE INNER TEMPLE.

The following account of a splendid Christmas Festival in the Inner Temple is given by Gerard Leigh, in his *Accidence of Armory*. The Hero of the Festival was Dudley, Earl of Leicester, who assumed the character of "Palaphilos, Prince of Sophie." He was entertained by a person representing a Sovereign Prince, and had for his officers the Lord Chancellor, Privy Seal, Treasurer, the Chief Justices of the King's Bench, Common Pleas, and Chief Baron of the Exchequer, besides many other dignitaries of the Law, and

upwards of fourscore of the Guard. The author thus commences.—

"After I had travailed through the East parts of the unknown world, to understand of Deedes of Armes, and so arriving in the fair River of Thames, I landed within half a league from the city of London, which was (as I conjecture) in December last, and drawing neer the city, suddenly heard the shot of double canons, in so great a number and so terrible, that it darkened the whole ayr; wherewith, although I was in my native country, yet stood I amazed, not knowing what it meant. Thus, as I abode in despair, either to return or continue my former purpose, I chanced to see coming towards me an honest citizen cloathed in a long garment, keeping the highway, seeming to walk for his recreation, which prognosticated rather peace than perill, of whom I demanded the cause of this great shot, who friendly answered, 'It is,' quoth he, 'a warning shot to the Constable Marshall of the Inner Temple, to prepare to dinner.' 'Why (said I) what, is he of that Estate, that seeketh no other means to warn his officers than with so terrible shot in so peaceable a Country.' 'Marry,' saith he, 'he uttereth himself the better to be that officer whose name he beareth.' I then demanded what Province did he govern, that needeth such an officer. He answered me, The Province was not great in

quantity, but antient in true nobility. A place, said he, priviledged by the most excellent Princess, the High governor of the whole Island, wherein are store of Gentlemen of the whole Realm, that repair thither to learn to rule and obey by Law, to yield their fleece to their Prince and Commonwealth; as also to use all other exercises of body and mind whereunto nature most aptly serveth to adorn, by speaking, countenance, gesture, and use of apparel, the person of a Gentleman; whereby amity is obtained, and continued, that Gentlemen of all countries, in their young years, nourished together in one place, with such comely order, and daily conference, are knit by continual acquaintance in such unity of mindes and manners as lightly never after is severed, than which is nothing more profitable to the Commonwealth.

"And after he had told me thus much of honour of the place, I commended, in mine own conceit, the policy of the Governor, which seemed to utter in itself the foundation of a good Commonweal; for that the best of their people, from tender years trained up in precepts of justice, it could not choose, but yield forth a profitable people to a wise commonweal, wherefore I determined with myself to make proofe of what I had heard by report.

"The next day I thought for my pastime to walk to this Temple, and, entring in at the gates,

I found the Building nothing costly, but many comely Gentlemen of face and person, and thereto very courteous, saw I pass to and fro, so as it seemed, a prince's port to be at hand: and passing forward, entred into a Church of antient building, wherein were many monuments of noble personages, armed in knightly habit, with their cotes depainted in antient Shields, whereat I took pleasure to behold. Thus gazing as one bereft with the rare sight, there came unto me an Herehaught, by name Palaphilos, a King of Armes, who courteously salnted me, saying, For that I was a stranger, and seeming by my demeanour, a Lover of Honour, I was his guest of right: whose curtesy (as reason was) I obeyed, answering, I was at his commandment.

"Then, said he, ye shall go to mine own lodging here within the palace, where we will have such cheer as the time and country will yield us; where I assure you I was entertained, as no where met I with better cheer or company, (&c.)—Thus talking we entred the prince his Hall, where anon we heard the noise of drum and fife. What meaneth this drum? said I. Quoth he, This is to warn Gentlemen of the Household to repair to the dresser, wherefore come on with me, and ye shall stand where ye may best see the Hall served: and so from thence brought me into a long Gallery, that stretcheth itself along

the Hall neer the prince's table, where I saw the prince set; a man of tall personage, a manly countenance, somewhat brown of visage, strongly featured, and thereto comely proportioned in all lineaments of body. At the nether end of the same table were placed the ambassadors of sundry princes. Before him stood the Carver, Server, and Cup-bearer, with great number of Gentlemen wayters attending his person: the Ushers making place to strangers of sundry regions that came to behold the honour of this mighty Captain. After the placing of these honourable guests, the Lord Steward, Treasurer, and Keeper of Pallas seal, with divers honourable personages of that Nobility were placed at a side Table neer adjoyning the Prince on the right hand: and at another Table on the left side were placed the Treasurer of the Household, Secretary, the Prince his Sergeant at the Law, four Masters of the Revels, the King of Arms, the Dean of the Chappel, and divers gentlemen Pensioners to furnish the same.

"At another Table on the other side were set the Master of the Game, and his Chief Ranger, Masters of the Household, Clerks of the Green Cloth and Check, with divers other strangers to furnish the same.

"On the other side, against them, began the Table, The Lieutenant of the Tower, accompanied with divers Captains of Foot-bands, and shot

At the nether end of the Hall, began the Table, the High Butler, the Panter, Clerks of the Kitchen, Master Cook of the Privy Kitchen, furnished throughout with the Souldiers and guard of the prince: all which with number of inferiour Officers placed and served in the Hall, besides the great resort of Strangers, I spare to write.

"The Prince so served with tender meats, sweet fruits, and dainty delicates confectioned with curious cookery, as it seemed wonder a world to observe the provision: and at every Course the Trumpetters blew the couragious blast of deadly War, with noise of Drum and Fyfe, with the sweet harmony of Violins, Sackbutts, Recorders, and Cornetts, with other instruments of Musick as it seemed Apollo's harp had tuned their stroke. Thus the Hall was served after the most antient order of the island, in commendation whereof I say, I have also seen the service of great Princes, in solemn seasons, and times of triumph, yet the order hereof was not inferior to any.

"But to proceed, this Herehaught Palaphilos, even before the second Course came in, standing at the High Table, said in this manner, The mighty Palaphilos, Prince of Sophie, high Constable Marshall of the Knights Templars, Patron of the honourable order of Pegasus: and therewith cryeth a Largess. The Prince praysing the

Herehaught, bountifully rewarded him with a chain to the value of an hundred Talents.

"I assure you I languished for want of cunning, ripely to utter what I saw so orderly handled, appertaining to service; wherefore I cease, and return to my purpose.

"The supper ended and tables taken up, the high Constable rose, and awhile stood under the place of Honour, where his Atchievement was beautifully embroidered, and devised of sundry matters, with the Ambassadors of foreign Nations as he thought good, till Palaphilos, King of Armes, came in, his Herehaught Marshall, and Persivant before him; and after followed his Messenger and Caligate Knight; who, putting off his Coronel, made his humble obeysance to the Prince, by whom he was commanded to draw neer and understand his pleasure; saying to him in few words to this effect; 'Palaphilos, seeing it hath pleased the high Pallas, to think me to demerit the office of this place; and thereto this night past vouchsafed to descend from heavens to increase my further honour by creating me Knight of her order of Pegasus, as also commanded me to join in the same Society such valiant Gentlemen throughout her province, whose living honour hath best deserved, the same choice whereof most aptly belongeth to your skill, being the watchman of their doings, and Register of their deserts; I

will ye choose as well throughout our whole Armyes, as elsewhere, of such special Gentlemen, as the gods have appointed, the number of 24 and the names of them present us: commanding also those chosen persons to appear in our presence in Knightly habit; that with conveniency we may proceed in our purpose.' This done, Palaphilos obeying his Princes commandement, with 24 valiant Knights, all apparelled in long white vestures with each man a Scarf of Pallas colours, and them presented with their names to the Prince, bowed towards these worthy personages, standing every man in his antienty, as he had born Armes in the field, and began to shew his Princes pleasure; with the honour of the Order."

MR. JUSTICE BULLER.

"The great and learned Judge Buller was admitted of the Inner Temple on the 8th of February, 1763, and called to the bar after the usual period of probation, from the honourable Society of the Middle Temple; from the same Society he was also made a Sergeant, and almost immediately after, promoted to the rank of a Judge of the Court of King's Bench.

"This is the age of young men—we now see men *born* statesmen and lawyers. They are translated almost from the cradle to the government of Kingdoms, and to presidency in legislation.

In former times, none but men advanced in years were permitted to assume the dignity of the coif, or to ascend the magisterial bench: a period indeed, beyond the bloom of manhood, customarily elapsed before their call to the bar. In the instance before us we see a Judge eminently qualified for the station he fills almost in the bloom of youth.

"Mr. Buller's first entré into the profession was in the department of Special Pleading. He studied under the present Judge, then Mr. Ashhurst, and, like Demosthenes, excelled his master, and was always ranked amongst the most eminent of the profession. His accession to business, as a common law draughtsman, was immediate and immense, his practice as a barrister was also, at first, considerable, and in an extremely short period, became equal to that of the very first-rate Lawyers.

"In all that part of practice which pushes a cause out of its regular course, and forms the great business of the Term, he had no equal; in every motion of consequence or special argument, he was always engaged, either for the Plaintiff or Defendant, and here Mr. Buller was perfectly at home.

"Nature designed him for a lawyer, and he wisely pursued her bias; for very early in life he seems to have entered into a recognizance, to talk

and think of nothing but law; his knowledge of practice and cases left him without a competitor. He resembles the Roman lawyer, Sulpitius, and certainly *is* the Coke of the present age.

"His Nisi Prius practice was, indeed, comparatively inconsiderable. The fact is, Mr. Buller had little success in his address to the passions, and could not therefore be eminent in his appeal to a jury. However shrewdly he cross-examined; however pertinently he pointed his remarks; however sagacious he might be in the arrangement and management of a cause, (from a want, probably, of directing his attention to the embellishments of oratory) he was by no means happy as an advocate: his advocatorial address rather conveyed the idea of barking than speaking. But excellence does not erect her banner in every region of the mind; he sought and found fame in the recesses of law learning; and therefore we are not to be surprised, if he was deficient in those more showy accomplishments, which were little, or not at all, objects of his choice or attention. If Special Pleading has any sun-beams, many others have been lighted up by *his*. The astonishing success of Judge Buller introduced the fashion of making the study of that science (if it ought to be dignified by that name) an introduction to the profession.

"The eloquence of magistracy is of a far dif-

ferent kind from that of the advocate; and the speeches of this very learned judge from the Bench, certainly approach as near perfection as modern example reaches: it is a model for imitation.

"He possesses great quickness of perception, sees the consequences of a fact, and the drift of an argument at its first opening, and can immediately reply to an unforeseen objection, though, perhaps, it may be sometimes suspected that his perception is *too quick;* it has certainly exposed him in some instances to the charge (whether true or false) of impatience and petulance, very indecorous in the character of a Judge; it is not enough that the magistrate on the bench should perceive the truth or fallacy of an argument; it is his duty to proceed with the most cautious deliberation, 'till, from the arguments of the pleader, or the result of evidence, he has drawn forth the clearest demonstrations that the case possibly admits, and established conviction, by the patient exertion of argumentative reason.

"It is the general, as it is the just professional character of this great lawyer, that he states his arguments with the utmost accuracy and precision, reasoning logically, and in a style, which may be deemed the true eloquence of law. Like his present Chief, he was not calculated to push his way in parliamentary campaigns; but his con-

summate knowledge rendered him an important acquisition to the bench. He was the youngest English Judge ever promoted to that rank, and, growing up under the cedar of knowledge and eloquence, may justly now be considered as one of its greatest ornaments.

"Mr. Justice Buller, if we consider the traits by which his judicial conduct has been strongly marked, seems to possess the greatest inflexibility of sentiment and opinion. Like Holt, he is too staunch and too systematic a lawyer to suffer the stubborn and general principles of law to give way in any instance to the milder inferences of equity. It cannot, however, be denied or concealed, that the calmness of his temper, and the delicate firmness of his conduct, have not in every instance kept pace with the inflexibility of his judgment, and tenacious adherence to general maxims. A striking proof of this was exhibited at the famous trial of the Dean of St. Asaph, when, after pushing his opposition to Mr. Erskine even to threats and commands, he yet suffered him to set his authority at open defiance, and proceed in the interrogation, to which he had so strenuously objected.

"The anecdote being remarkable, and eminently calculated to illustrate this part of the Judge's character, it may not be improper to relate it.

"Mr. Erskine put a question to the Jury re-

lative to the meaning of their verdict; Mr. Justice Buller objected to its propriety. The Counsel reiterated his question, and persisted in demanding an answer. The Judge again interposed his authority in these emphatic words: 'Sit down, Mr. Erskine; know your duty, or I shall be obliged to make you know it.' Mr. Erskine with equal warmth replied: 'I know *my* duty as well as your Lordship knows *your* duty. I stand here as the advocate of a fellow citizen, and *I will not sit down.*' The Judge was silent, and the advocate persisted in his question.

"Who was legally right, is not intended to be here discussed; since this book treats of the characters of Judges, not of the maxims of Law. But it must be readily allowed, that to proceed to threats, which either he could not, or he was not inclined to, carry into execution, was, in some respect, derogatory from that dignity which the representative of Majesty and Justice ought carefully to sustain." (*Strictures on the Lives and Characters of the most eminent Lawyers of the present day*, (1790) *p.* 103.)

PRESCRIBING FOR A RIGHT OF ROBBERY.

In an action on the case on the statute of Winton, Manwood Justice said, "When I was servant to Sir James Hales, one of the Justices of the Common Pleas, one of his servants was robbed

at *Gadshill*, within the Hundred of Gravesend, in Kent, and he sued the men of the Hundred upon this statute, and it seemed hard to the inhabitants there, that they should answer for the robberies done at Gadshill, because robberies are there so frequent, that if they should answer for all of them, they should be utterly undone. And Harris, Sergeant, was of counsel with the inhabitants of Gravesend, and pleaded for them, *that time out of mind, &c. felons had used to rob at Gadshill, and so prescribed;* and afterwards, by award, they were charged; and note, that the case was, that three men were robbed, and they three joined in the action against the inhabitants." (2 *Leon. Rep.* 12.)

LORD KENYON'S LATINITY.

Lord Kenyon's classical acquirements are well known to have been but slender. He was nevertheless exceedingly fond of ornamenting his judgments with Latin quotations, which did not always fall exactly into their right places. Upon one occasion, he is said to have concluded his summing up in the following manner: "Having thus discharged your consciences, Gentlemen of the Jury, you may retire to your homes and your hearths, in peace; and with the delightful consciousness of having well performed your duties as citizens, you may lay down your heads upon

your pillows, and say, '*Aut Cæsar aut nullus!*'" Upon another occasion, his Lordship, wishing to illustrate in a strong manner the conclusiveness of some fact, thus addressed the Jury, "Why, Gentlemen of the Jury, it is as plain as the noses upon your faces!—*Latet anguis in herbâ!*" Even death could not divorce him from his bad Latin. Upon his hatchment, it is said, there was inscribed, *Mors Janua vitO*. On this fact being related to Lord Ellenborough, his Lordship observed, "Yes, Sir: it was by his own particular directions,—and, moreover, it saved the expense of a diphthong!"

LORD CLARENDON AND HIS FRIENDS.

Lord Clarendon, in the earlier part of his professional career, of which he has given a very pleasing account in his Life of himself, enjoyed the friendship of many of the most distinguished members of his profession. "Having a competent estate of his own," as he tells us, "he enjoyed a very pleasant and plentiful life, living much above the rank of those lawyers, whose business was only to be rich, and was generally beloved and esteemed by most persons of condition and great reputation." His method of spending his time at this period of his life, he has himself described. "He always gave himself at dinner to those who used to meet together at that hour, and in

W. Read. Sc.

LORD CLARENDON.

such places as was mutually agreed between them, where they enjoyed themselves with great delight, and public reputation, for the innocence, and sharpness, and learning of their conversation. For he would never suffer himself to be deprived of some hours (which commonly he borrowed from the night,) to refresh himself with polite learning, in which he still made some progress. The afternoons he entirely dedicated to the business of his profession, taking instructions and the like, and very rarely supped, except he was called out by some of his friends, who spared him the more, because he always complied with those summonses; otherwise he never supped for many years, (before the troubles brought in that custom,) both in the gaining that time to himself, and that he might rise early in the morning, according to his custom, and which he would say, he could never do when he supped. The vacations he gave wholly to his study and conversation, never going out of London in those seasons, except for two months in the summer, which he spent at his own house in the country with great cheerfulness, amongst his friends, who then resorted to him in good numbers." (*Life of Clarendon, vol.* i. *p.* 27.)

He was much attached to the society of the many eminent men, whose friendship he was fortunate enough to possess, and he has acknow-

ledged his obligations to them with a gratitude and a modesty highly honourable to his character. "He owed all the little he knew, and the little good that was in him, to the friendships and conversation he had still been used to, of the most excellent men in their several kinds, that lived in that age, by whose learning and information and instruction he formed his studies, and mended his understanding, and by whose gentleness and sweetness of behaviour, and justice and virtue and example, he formed his manners, and subdued that pride, and suppressed that heat and passion he was naturally inclined to be transported with."

Amongst the most favoured of his intimates, we find the name of the celebrated Selden, whose character he has drawn with the affectionate admiration which it merited.

"Mr. Selden was a person, whom no character can flatter, or transmit in any expressions equal to his merit and virtue. He was of so stupendous learning in all kinds, and in all languages, (as may appear in his excellent and transcendant writings,) that a man would have thought he had been entirely conversant amongst books, and had never spent an hour but in reading and writing; yet his humanity, courtesy, and affability, was such, that he would have been thought to have been bred in the best courts, but that his good-

nature, charity, and delight in doing good, and in communicating all he knew, exceeded that breeding. His style in all his writings, seems harsh, and sometimes obscure, which is not wholly to be imputed to the abstruse subjects of which he commonly treated, out of the paths trod by other men, but to a little undervaluing the beauty of a style, and too much propensity to the language of antiquity; but in his conversation he was the most clear discourser, and had the best faculty in making hard things easy, and presenting them to the understanding, of any man that hath been known. Mr. Hyde was wont to say, that he valued himself upon nothing more than upon having had Mr. Selden's acquaintance from the time he was very young, and held it with great delight as long as they were suffered to continue together in London; and he was very much troubled always when he heard him blamed, censured, and reproached, for staying in London, and in the parliament, after they were in rebellion, and in the worst times, which his age obliged him to do: and how wicked soever the actions were, which were every day done, he was confident he had not given his consent to them; but would have hindered them if he could, with his own safety, to which he was always enough indulgent. If he had some infirmities with other men, they were

weighed down with wonderful and prodigious abilities and excellencies in the other scale."

The portrait of Lord Chief Justice Vaughan is not so amiable a one.

"John Vaughan was then a student of the law in the Inner Temple, but at that time indulged more to the politer learning, and was, in truth, a man of great parts of nature, and very well adorned by arts and books: and so much cherished by Mr. Selden, that he grew to be of entire trust and friendship with him, and to that owed the best part of his reputation, for he was of so magisterial and supercilious a humour, so proud and insolent a behaviour, that all Mr. Selden's instructions, and authority, and example, could not file off that roughness of his nature, so as to make him very grateful. He looked most into those parts of the law which disposed him to least reverence to the crown, and most to popular authority, yet without inclination to any change in government; and therefore, before the beginning of the civil war, and when he clearly discerned the approaches to it in parliament, (of which he was a member,) he withdrew himself into the fastnesses of his own country, North Wales, where he enjoyed a secure, and as near an innocent life, as the iniquity of that time would permit; and upon the return of King Charles the Second, he appeared under the character of

man who had preserved his loyalty entire, and was esteemed accordingly by all that party.

"His friend, Mr. Hyde, who was then become Lord High Chancellor of England, renewed his old kindness and friendship towards him, and was desirous to gratify him all the ways he could, and earnestly pressed him to put on his gown again, and take upon him the office of a judge; but he excused himself upon his long discontinuance, (having not worn his gown, and wholly discontinued the profession from the year 1640, full twenty years,) and upon his age, and expressly refused to receive any promotion; but continued all the professions of respect and gratitude imaginable to the Chancellor, till it was in his power to manifest the contrary, to his prejudice, which he did, with circumstances very uncommendable."

The anti-prerogative principles of Sir John Vaughan may, perhaps, have influenced Clarendon in the foregoing sketch of his character. A much more amiable idea of him may be gathered from Selden's dedication to him of his *Vindiciæ Maris Clausi*, in which he addresses him with the warmest expressions of esteem and affection.

Amongst his other professional friends, "who were all eminent men, or of the most hopeful parts; and who being all much superior to him in age and experience, and entirely devoted to their profession, were yet well pleased with the gaiety

of his humour, and inoffensive and winning behaviour," Clarendon reckoned Lane, afterwards successively Lord Chief Baron and Lord Keeper; Palmer, afterwards Attorney General; Sergeant Maynard and Bulstrode Whitelocke. "All were of eminent parts and great learning out of their profession, and in their profession, of signal reputation. And though," he adds, "the two last did afterwards bow their knees to Baal, and s swerved from their allegiance, it was with les rancour and malice than other men."

There appears to have been no one amongst al his friends to whom Clarendon was more tru attached than to Selden, "upon whom," he tell us, "he looked with so much affection and s verence, that he always thought himself best wh he was with him."

For the characters of his other friends,—Lo Falkland, Ben Jonson, Waller, Hales, Chillin worth, and others, we refer the reader to his Life

READINGS IN THE INNS OF COURT.

"The eve next before the Reading begins, t Reader takes his place at the upper end of t bench-table, in the treasurer's place; and, supp ended, the ancientest utter barrister in comme brings in a case at the bench-table, which t reader and benchers are to argue if they wi and then, after rising from the table, the rea

fire, and next all the benchers and gentlemen follow and come to the place between the buttery-door, and backside of the skreen in the hall, where the reader, by some plausible words, or house speech, declares publickly the statute whereon he purposeth to read the next day. Then the ancientest bencher, by another plausible house speech, commends Mr. Reader's discretion in the choice of his statute, and declares the desires of the whole house, and what great desire they have to hear the reader's learned conceipts upon that statute, in his ensuing reading, and so take leave and depart.

"The next morning, about eight or nine of the clock, the reader comes into the hall, followed by the judges, if any of that house be present, and benchers that attend the case that day: and as soon as the reader is set at the table, and all ceremonies of curtesy, the reader takes the oaths of supremacy and allegiance, and then makes another house speech, wherein he utters some divisions and expositions of the statute whereon he is to read.

"During the reading time, the reader is to read, every reading-day, his two first cases twice, the barrister, who is to argue the case, do desire.

And the first day, the ancientest utter barrister in commons is to take the reader's case, and is to argue it. And the readers of Inns of

Chancery, and the vacationer utter barristers, one after another, are to take the reader's case in the morning, every reading-day, and the ancientest bencher, or the ancientest of the judges then present, who are to argue the reader's case, (if they will,) may put the utter barrister appointed to argue that morning, to any other of the reader's cases: after whom, the judges and benchers argue, according to their antiquity, the puisne bencher beginning first, and so every one after another, till the ancientest judge or bencher have argued the case, all which is to be done *ex tempore pro* and *con*: and lastly, the reader to answer the objections made against his conclusion, to shew his opinion of his case, as he takes the law to be; and so concludes that morning's reading.

"Immediately after the first morning's reading is ended, the reader delivers his paper of cases for that morning, to the puisne vacationer utter barrister, who is to argue one of those cases which he likes best, immediately after dinner, at the bench-table end, and the puisne barrister and all the other barristers attending the reading, resort together to break the case, and open the points to the said puisne barrister, and then he argues the case at the bench-table, after dinner, and after him every bencher present argues the case *pro* and *con*. And lastly, the reader concludes the argument with his opinion, as he takes the law

and so the exercise is continued every reading-day, which is closed up by the ancientest of the bench, and then the reader, with congratulatory house speeches, each to other, for their company, pains, and attendance, costs and charges.

"If in reading-time, or other times of exercise, there fail to be sufficient attendance upon the exercise, the reader, benchers, and utter barristers, respectively, may amerce the absent, dissolve the exercise for that time, and so depart. Before any moote in the hall, after supper, the benchers go all behind the skreen, as afore, and there break the case, which is to be argued then forthwith in the hall, and they have power to over-rule the case, as not argumentable; and that over-ruling is termed a failer; and the whole inner barre is to be amerced, unless they presently plead and argue another case of the same learning, which, if the benchers that sit approve of, the amercement is saved.

"Although the reader at the first week's end, or fortnight's end, do end his reading, yet there is exercise in the house or abroad, by readers or vacationers, until the end of the whole reading-month, as if the reading had so long continued. But if no reading at all be in the house, yet are the readers of Inns of Chancery, and the gentlemen of the inner barre to hold the grand mootes so long time as any other reader of any other of

the three inns of court do continue their reading, except in time of mortality." (*Dugd. Orig. p.* 160.)

THE ANCIENT PRACTICE OF RETAINING LAWYERS.

A reference has been already made to the custom which formerly prevailed in noble families of retaining a lawyer in their service, who received an annual stipend, *pro consilio impenso et impendendo*, and who was treated as a retainer. (*See Barrington's Observations on the Statutes*, p. 374.) In Madox's *Formulare Anglicanum*, there is the form of a retainer during his life of John de Thorpe, as Counsel to the Earl of Westmoreland; and it appears by the household book of Algernon, fifth Earl of Northumberland, that in the beginning of the reign of Henry VIII. there was in that family a regular establishment of two counsellors and their servants.

In Selden's Table Talk, we find the following passage: "Lady Kent articled with Sir Edward Herbert, that he should come to her when she sent for him, and stay with her as long as she would have him, to which he set his hand; then he articled with her, that he should go away when he pleased, and stay as long as he pleased, to which she set her hand."

"When I read this passage," observes an ingenious writer, "I was at a loss to conceive what was the nature of the connexion between her La-

dyship and Sir Edward; but a legal friend suggested to me, that the latter, who was an eminent lawyer, was probably retained for his advice by Lady Kent, at an annual salary; and he produced to me examples of deeds granted for payments on the same account, one of them so late as the year 1715. Hence it would appear, that the Lady had a great deal of law business on her hands, which would render the domestic counsel of such a person as Selden very valuable to her." (*Aikin's Life of Selden, p.* 154.) Selden was conjectured to have been privately married to Lady Kent.

LORD MANSFIELD'S WIT.

"Lord Mansfield, when fair occasion offered, would sometimes make the Bench and the Bar relax a little from their accustomed gravity; but the object to be attained by a moment's pleasantry was generally worthy of a great judge. Numerous instances of this kind might be adduced by the Bar, who have not only enjoyed the wit, but have also felt the force of the keen arrows which darted occasionally through the Court. To select two or three of this nature may relieve the jurisprudent a little who has already travelled over many pages of dry law.

"To convert a capital offence to the lighter punishment of transportation, where favourable circumstances in behalf of the prisoner made an

impression upon every one present, except the prosecutor, Lord Mansfield recommended the Jury to find the value of a gold trinket, which the prisoner had stolen, under 40 shillings. The prosecutor, unfeelingly and imprudently, expressed his surprise, 'Under forty shillings, my Lord! Why, the fashion alone cost me more than double the sum!' 'That may be, friend,' replied the Chief Justice, 'yet God forbid that we should hang a man for fashion sake.'

"In his own Court he set too just a value on his time, to permit it to be improperly wasted by long interrogatories of Counsel in justifying bail, where the debt was barely of magnitude enough to be brought into the Court of King's Bench. It fell to the lot of the late Sergeant Davy to examine a Jew who came to justify bail in a tawdry laced suit of clothes before Lord Mansfield. The jocose and learned Sergeant pressed the Israelite close to know whether he was worth the sum he had sworn to, after all his debts were paid. The Jew answered repeatedly and unequivocally in the affirmative; but the debt, which was the object of the suit, being small, and the Sergeant still persisting in his interrogatories, his Lordship addressed the Sergeant unexpectedly with—'For shame, Brother Davy, how can you teaze the poor gentleman so? Don't

you see that he would *burn* for double the sum?" (*Halliday's Life of Lord Mansfield, p.* 212.)

"The late Mr. Madan, who about the year 1756, changed his bar gown for a clerical one, having written a pamphlet* wherein he arraigned the mistaken lenity of the Judges in too frequently reprieving capital offenders, was present either as a magistrate or one of the Grand Jury at the Assizes held at East Grinstead, in Sussex, some years ago, which proved to be a maiden one. On

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* The pamphlet to which Mr. Halliday here alludes is the "Thoughts on Executive Justice." "His imagination," says a writer in a valuable periodical work, in speaking of this Revd. Author, "his imagination seems to have been overwhelmed with a horror of footpads and highway robbers by day, and of house-breakers by night. In his fit of panic and pious zeal he invoked the shadows of the Judges of Assize (for he held the substance to be gone) to prevent those beasts of prey from changing the kingdom into a desert, quoting ancient poets to shew that wounds which were incurable required the knife; considering the poet's premonition, that all other remedies must be first resorted to, merely in the same sense as the Apostle's prelude, to try all things, but to hold fast to that which is good, and representing the Kingdom of Heaven as one whose principal happiness would be, that thieves did not there break through nor steal, and as if it were the paramount duty of man to assimilate earth to heaven in that particular." (*See The Inquirer, vol.* ii. *p.* 95.)

the Sheriff's expressing his happiness in presenting the white gloves to his Lordship, as the emblem of purity, the Chief Justice pleasantly observed, 'Mr. Madan, too, will have a singular pleasure on this occasion, because there is no condemned prisoner to be reprieved.' (*Ibid. p.* 186.)

"In his convivial conversation," says Mr. Halliday of Lord Mansfield, "he was particularly excellent. His general and almost universal knowledge of men and things presented a constant and copious supply of familiar dialogue and discourse. His sallies of pleasantry were innocent and wounded no man; his sentences of observation were judicious and solid. His particular friends could easily illustrate this part of his character by a thousand familiar instances; the few which the Author begs leave to select occasionally as they serve to illustrate his character for ease and pleasantry, were impromptus delivered on the spur of the occasion, and some of them are well known to his surviving friends.

"One of the Right Reverend Bench having very charitably established an alms-house, at his own expense, for 25 poor women; Mr. Murray in his juvenile days, was applied to for an inscription to be placed over the portal of the house upon which he took up his pencil and immediately wrote the following.

"Under this roof
The Lord Bishop of ———
Keeps
No less than 25 Women."
(*Halliday's Life of Lord Mansfield*, p. 130.)

SERGEANTS' RINGS.

The custom of giving rings on having the de-
ree of Sergeant conferred, is one of the few
lics of antiquity still retained in the profession.
the account of the great Sergeants' Feast in
55, by Dugdale, we have an accurate descrip-
n of the rings given on that occasion.

"These Sergeants made choice of one Nicholas
ering, goldsmith, to make their rings of gold,
o was allowed, for the fashion of those rings,
ich were given to the King and Queen; viz.
each ring xx*d*. and for the fashion of every
her ring xii*d*.

"It was also agreed, that all the rings of x*s*.
gold, and above, should be made with swaies;
l all under that value, their fashion should be
in. Likewise that every ring of gold of xx*s*.
e, should contain in gold weight 18*s*. two
lings being allowed for the fashion of every
h ring. And that every ring of xvi*s* in gold to
gh 14*s*. and two shillings to be allowed for the
ion. Likewise that every ring of vi*s*. viii*d*. in

gold to bear his own marking. And every ring of v*s.* iv*d.* in gold, to have allowed 6*d.* for fashion and no more. And every ring of 4*s.* in gold to bear his full weight in gold besides the fashion; and, lastly, that all the said several gold rings should be of one value, and contain one weight, Secundum ratum, as afore, and that every ring do contain one value, without diminution in form severally before agreed on.

"Note. That each Sergeant disbursed and delivered to the goldsmith, towards the provision of rings, viz. in half sovereignes, the weightiest that could be gotten, xx*s.*

"The rings given to the King and Queen were made of the finest angel gold, every ring being in value, besides fashion, iii*l.* vi*s.* viii*d.*"

The following is Fortescue's account of the Sergeants' rings. "I very well remember when I took upon me the estate and degree of a Sergeant at Law that my bill for gold rings came to fifty pounds. Each Sergeant at the time of his creation gives to every prince of the blood, to every duke, and to each archbishop, who shall be present at the solemnity, to the Lord High Chancellor, and to the Treasurer of England, to each a ring of the value of 1*l.* 6*s.* 8*d.* to every Earl and Bishop, to the Keeper of the Privy Seal, to each Chief Justice, to the Chief Baron of the King's Exchequer, a ring worth 20*s.* and to every other

Lord of Parliament, to every Abbot and to every Prelate of distinction, to every Worshipful Knight then and there present, to the Master of the Rolls, or to every Justice, a ring to the value of one mark; to every Baron of the Exchequer, to the Chamberlains, and to all the great men at Court then in waiting on the King, rings of a less value in proportion to their rank and quality, so that there will not be the meanest Clerk, especially in the Court of Common Pleas, but that he will receive a ring convenient to his degree. Besides they usually make presents of rings to several of their friends and acquaintance." (*Fortescue de Laudibus, chap.* 50.)

In the reign of Charles II. we find Chief Justice Kelynge remonstrating with the Sergeants on the weight of their rings, as appears by the following memorandum in 1 *Mod. p.* 9.

"Seventeen Sergeants being made the 14th day of November, a day or two after Sergeant Powis, the junior of them all, coming to the King's Bench Bar, Lord Chief Justice told him, that he had something to say to him, viz. That the rings which he and the rest of the Sergeants had given weighed but eighteen shillings a piece; whereas Fortescue in his book De laudibus Legum Angliæ says, 'The rings given to the Chief Justice and to the Chief Baron ought to weigh twenty shillings apiece;' and that he spoke not this expect-

ing a recompence, but that it might not be drawn into a precedent, and that the young gentlemen there might take notice of it."

The motto inscribed on the rings of these seventeen learned Sergeants would not have disgraced the gentlemen practising in the Courts of Algiers or Constantinople—A DEO REX, A REGE LEX!

LORD CHIEF JUSTICE SCROGGS.

Roger North has left us two portraits of Sir William Scroggs, one in the Life of Lord Keeper Guilford, the other in the *Examen*. The following is from the Life of the Lord Keeper.

"This Sir William Scroggs was made Lord Chief Justice of the King's Bench while his Lordship sat in the Common Pleas. He was of a mean extract, having been a butcher's son, but wrought himself into business in the law, was made a Serjeant, and practised under his Lordship. His person was large, visage comely, and aspect witty and bold. He was a great voluptuary, and companion of the high Court rakes, as Ken, Gug, &c. whose merits for ought I know might prefer him. His debaucheries were egregious, and his life loose, which made the Lord Chief Justice Hales detest him. He kept himself very poor, and when he was arrested by King's Bench process, Hales would not allow him the privilege

of a Sergeant; as it touched elsewhere. He had a true libertine principle. He was preferred for professing loyalty: but Oates coming forward with a swinging popularity, he (as Chief Justice) took in and ranted on that side most impetuously. It fell out that when the Earl of Shaftesbury had sat some short time in the Council, and seemed to rule the roast, yet Scroggs had some qualms in his politic conscience, and, coming from Windsor in the Lord Chief Justice North's coach, he took the opportunity and desired his Lordship to tell him seriously, if my Lord Shaftesbury had really so great power with the King as he was thought to have. His Lordship answered quick, 'No, my Lord, no more than your footman hath with you.' Upon that, the other hung down his head, and, considering the matter, said nothing for a good while, and then passed to other discourse. After that time, he turned as fierce against Oates and his plot, as ever before he had ranted for it, and thereby gave so great offence to their evidences, the plot witnesses, that Oates and Bedloe accused him to the King, and preferred formal articles of divers extravagancies and immoralities against him. The King appointed a hearing of the business in Council, where Scroggs run down his accusers with much severity and wit; and the evidences fell short, so that for want of proof, the petition and articles were dismissed. But, for

some jobs in the King's Bench, as discharging a grand jury, &c. he had the honour to be impeached in Parliament, of which nothing advanced. At last he died in Essex-street of a polypus in the heart. During his preferment he lived well, and feathered his nest, for he purchased the manor of Gruntwood, in Essex. It was observed of him, that every day in his house was holyday. His lady was a very matronly good woman; she died long before him. He had one son who lived not many years after him; for he was a sufferer in the wars of amour. He had two daughters; one of whom was married to Sir Robert Wright, and lived to see his misfortunes; for at the Revolution he was clapt up in Newgate, and there died. The other daughter, sometime the widow of Mr. Kilbie, a lawyer, married the truly noble Charles Hatton, and may be yet living." (*Life of Lord Guilford, vol.* ii. *p.* 123, *and see North's Examen, p.* 568.)

Roger North has alluded to the conduct of Scroggs on the trials for the Popish plot, and certainly nothing could be more scandalous. On the trial of Stayley, the first victim in this series of judicial murders, Scroggs displayed so much heat that he thought it necessary to make an apology, alleging "that it was better to be warm there than in Smithfield." As soon as the Jury had found Stayley guilty, Scroggs, with the bru-

tal levity which distinguished him, addressed the prisoner with,—"Now you may die a Roman Catholic, and when you come to die, I doubt you will be found a priest too." (*See Howell's State Trials, vol.* vi. *p.* 1502, *and the other Trials in vol.* vii.)

In the year 1680, "Articles of High Misdemeanours" against Scroggs were presented to the King by Oates and Bedloe, whom he had offended by his conduct on the trials for the Popish Plot, as above related. Amongst these articles we meet with the following:

"That the Lord Chief Justice is very much addicted to cursing and swearing in his common discourse, and to drink to excess, to the great disparagement of the dignity and gravity of his said place. He did, in his common discourse at dinner, at a gentleman's house of quality, publicly and openly use and utter many oaths and curses, and there drank to excess."

These charges were not prosecuted; but Scroggs was subsequently impeached by the House of Commons, on which occasion his immoralities were again made the subject of a charge against him.

"Whereas, the said Sir William Scroggs, being advanced to be Chief Justice of the Court of King's Bench, ought, by a sober, grave, and virtuous conversation, to have given a good example,

to the King's liege people; and to demean himself answerable to the dignity of so eminent a station; yet he, the said Sir William Scroggs, on the contrary, by his flagrant and notorious excesses and debaucheries, and his profane and atheistical discourses, doth daily affront Almighty God, dishonour his Majesty, give countenance and encouragement to all manner of vice and wickedness, and bring the highest scandal on the public justice of this kingdom." (*State Trials*, viii. 200.)

"He was," says Burnet, speaking of Scroggs, "a man more valued for a good readiness in speaking well, than either for learning in his profession or any moral virtue. His life had been indecently scandalous, and his fortunes were very bad. He was raised by the Earl of Danby's favour, first to be a Judge, and then to be Chief Justice; and it was a melancholy thing to see so bad, so ignorant, and so poor a man raised to that great post."

TRIALS FOR THE POPISH PLOT.

There are few passages in English history more obscure than the much debated question of the Popish Plot.—So many contradictions occur on every side, and so many arguments suggest themselves in favour of each view of the subject, that it seems impossible either to give credit to the plot or wholly to reject the belief of it. Perhaps

Dryden's representation of it is, after all, the most correct. He tells us,

"Some truth there was, but dash'd and brew'd
with lies:"

and that

"Succeeding times did equal folly call,
Believing nothing, and believing all."

Mr. Fox, in the Fragment of his Historical Work, has examined the subject with his usual philosophical judgment, and has weighed, with great nicety, the authorities on both sides of the question.—But whatever diversity of opinion may exist with regard to the reality of the plot, there can be but one sentiment with respect to the trials of the persons who were supposed to be implicated in it, and who were wickedly murdered under the sanction of the law. "The proceedings on the Popish Plot," says Mr. Fox, "must always be considered as an indelible disgrace upon the English nation, in which King, Parliament, Judges, Juries, Witnesses, Prosecutors, have all their respective, though certainly not equal, shares. Witnesses of such a character as not to deserve credit in the most trifling cause, upon the most immaterial facts, gave evidence so incredible, or to speak more properly, so impossible to be true, that it ought not to have been believed if it had come from the mouth of a Cato; and upon such

evidence, from such witnesses, were innocent men condemned to death, and executed. Prosecutors, whether Attorney and Solicitors General, or Managers of Impeachments, acted with the fury which in such circumstances might be expected; Juries partook, naturally enough, of the national ferment; and Judges, whose duty it was to guard them against such impressions, were scandalously active in confirming them in their prejudices, and inflaming their passions."

A CHINESE INDICTMENT FOR HIGH TREASON.

"1st. When our Royal Father, on the 3d day of the 9th moon of the 60th year of his reign, elected ourself to be his heir and successor, Hoquen waited on us, on the second of the moon previous to the disclosure of the imperial will, and presented us with the insignia of the rank newly conferred on us, thereby betraying an important secret of the state, that had been confided to him, in the expectation that such conduct would be meritorious in our estimation.

"2nd. On receiving the summons of our Imperial Father, on the 1st moon of the preceding year, to attend at the palace of Yuen-ming-yuen, he ventured to ride in on horseback through the left gate, and by the great hall of Ching-la-quang-ming, as far as the bottom of the mount, called

Shem-shan, regardless, to a degree beyond example, of a father and a sovereign.

"3d. When formerly suffering from a lameness in his feet, he went into the interior of the palace in a palanquin, and passed and repassed through the gate of Shin-vev-men in a wheel-chair, before the gazing eyes of the multitude, and without the smallest fear or hesitation.

"4th. The young females that were educated for the service of the palace, he took from thence, and appropriated to himself as concubines, without any sensation of shame, or regard to decorum.

"5th. During the latter campaigns against the rebels in the provinces of Se-chuen, and Houquen, when our imperial father waited with anxious expectation for intelligence from the army, so as to be bereft of sleep and appetite, Ho-quen received himself the various reports that arrived from the troops stationed in different quarters of the empire, and detained them, according to his pleasure, with a view to deceive his sovereign, by misrepresentation and concealment; in consequence whereof the military operations of the campaign were for a considerable time incomplete and ineffectual.

"6th. Having been appointed, by a decree of our imperial father, to the presidency of the supreme board for civil affairs, and also to that of the supreme court of judicature, and afterwards,

on account of some experience acquired in superintending the disbursements of the army, having been directed, by another imperial decree, to officiate as secretary to the supreme board of revenue; he immediately united in his own person the power and authority which were respectively annexed to these several high offices.

"7th. Last winter, when the venerable person of our imperial father laboured under infirmity, his signature and hand-writing were in some degree confused, and not easily distinguishable; whereupon Ho-quen had the audacity to declare, that they had 'better be thrown aside,' and then issued orders of his own suggestion.

"8th. In the last moon of the preceding year, Kien-Ho reported, that in the districts of Sin-wha and Quei-Te, a party of above a thousand of the rebels had collected, and forcibly carried away a herd of cattle belonging to the Da-lai-lama's merchants, as well as mortally wounded two persons, and that they still continued to ravage the district of Ching-hay. Ho-quen, however, rejected and dismissed the report, and, concealing the whole transaction, took no measures in consequence.

"9th. On the late event of our imperial father's decease, we issued our orders, declaring, that the attendance of such of the princes and chieftains of the Monque tribes as had not had the

small-pox, would be dispensed with; but Ho-quen, in opposition to our commands, signified to them to attend indiscriminately, whether having or not having had that disease; regardless of the intention of our government to shew to foreign tribes our kindness and consideration. The motives of his conduct herein it would be difficult to investigate.

"10th. The minister of state, Su-lin-go, was entirely deaf, and worn out by age and infirmity; yet, because he was connected by marriage with Ho-lin, the younger brother of Ho-quen, his incapacity to discharge the duties of his situation was artfully concealed from the emperor's knowledge.

"11th. The officers Ou-sung-lau, Ly-ham, and Ly-quang-yun, having received their education at the house of Ho-quen, have been since promoted to the most respectable offices in the state.

"12th. Many of the principal officers, whose names have been registered in the different civil and military departments, have been, in instances too numerous to be particularized in this place, removed and dismissed according to his pleasure, and by his sole authority.

"13th. In the late confiscation of the property of Ho-quen, many apartments were found to be built in a most costly manner, of the imperial wood hau-moo, and several ornamented terraces

and separate inclosures, were observed to have been constructed in the style and resemblance of the imperial palace of Hing-shen-Kung: the gardens likewise laid out in a style little differing from that of Yuan-ming-quen, and Fung-too-yas-tay, but with what view or design we cannot imagine.

"14th. Among his treasures of pearls and precious stones, upwards of two hundred strings or bracelets of the former were discovered, many times exceeding in value those in our imperial possession. One among the pearls belonging to Ho-quen was of an enormous size, and exceeded even that which adorns the imperial crown. There were likewise found various buttons distinguishing princely rank, carved out of precious stones, such as his situation by no means entitled him to wear. Many score of these gems were discovered, besides pieces of the same kind in the rough state, to an incalculable amount, and in an endless variety, unknown even among the imperial treasures.

"15th. An estimate of the property in gold and silver which has been confiscated is not yet completed; but the sum is already found to exceed many millions of ounces of silver.

"16th. The avarice by which he appears to have been actuated, and the corruption by which his wealth has been amassed, cannot be equalled in the history of preceding ages." (*Sir G. Staunton's Penal Code of China, p.* 494.)

THE LAW OF THE NOVELS.

Those of our legal readers who, like Curran, go to bed with a romance in their hands, and, instead of the Novels of Justinian, study those of Sir Walter Scott, must often have been shocked at the marvellous mistakes in points of law, into which the Heroes and Heroines of those works so frequently fall. We could cite numerous examples, but the two following will suffice. The first is from Mrs. Brunton's excellent Novel of "Self-Control." Hargrave, as our readers will recollect, attempts to enforce his suit by a *latitat*, and despatches two bailiffs to his mistress as intercessors.

"I cannot procure the money just now, even though I were willing," said Laura, with spirit, "and I do not believe that you have a right to remove me." "Oh, as for the right, Miss, we'll let you see that.—*There is our warrant properly signed and sealed.* You may look at it in my hand, for I don't much like to trust you with it."

And what sort of an instrument does the reader imagine this formidable warrant was? why,

"The warrant was stamped and imposingly written on parchment: with the tautology which Laura had been taught to expect in a Law-paper, it rung changes upon the permission to seize and confine the person of Laura Montreville, as heiress

of William Montreville, debtor to John Dykes of Pimlico. It was signed as by a Magistrate, and marked with the large Seals of office. Laura no longer doubted."—

Miss Edgeworth, in many of her novels, is exceedingly *technical*, but where she has meddled with the law she has been eminently unsuccessful. In "Patronage" there is a great display of professional knowledge in the person of Mr. Alfred Percy, a young Barrister, who thus narrates the mode in which he took advantage of the Statute of Limitations.

"A little while after my interview with Lord Oldborough, his Lordship, to my surprise, for I thought his offer to assist me in my profession, if ever it should be in his line, was a mere courtier's promise, sent his Attorney to me in a cause of Col. Stanton's. The Colonel has gone to law (most ungrateful as he is) with his uncle, who was his guardian, and who managed all his affairs for years. I need not explain to you the merits of the suit, or the demerits of the plaintiff. It is enough to tell you that I was so fortunate as to perceive, that the Colonel's claim was what we call *barred* in law by the Statute of Limitations. I, all-glorious with the hope of *making a good point*, which had escaped the other Counsel employed on our side, went into Court *with my act in my hand*; but when I was beginning to make

my point, the Senior Counsel would not permit me to speak, snatched the book from my hand, stated my objection as his own, never even acknowledged the assistance he had received from me,—obtained a *nonsuit* against the Colonel, and had all the honor and triumph of the day. Some few gentlemen of the Bar who were near me knew the truth, and they were indignant. I hear that my Senior, whose name I will never tell you, lest you should hate it, has got into great practice by the gaining of this suit." (*Patronage, v.* ii. *p.* 172.)

SIR FRANCIS PEMBERTON.

"The Lord Chief Justice Pemberton was a better practiser than a Judge, for, being made Chief Justice of the King's Bench, he had a towering opinion of his own sense and wisdom, and rather made, than declared, law. I have heard his lordship say that, in making law, he had outdone Kings, Lords, and Commons. This may seem strange to such as see not the behaviour of Judges, and do not consider the propensity of almost all to appear wiser than those that went before them. Therefore, it is the most impartial character of a Judge to defer to eldership, or antiquity. But to proceed: this man's morals were very indifferent; for his beginnings were debauched, and his study and first practice in the gaol; for having been one of the fiercest town

rakes, and spent more than he had of his own, his case forced him upon that expedient for a lodging; and there he made so good use of his leisure, and busied himself with the cases of his fellow collegiates, whom he informed and advised so skilfully that he was reputed the most notable fellow within those walls, and, at length, he came out a sharper at the law; after that, he proceeded to study and practice, till he was eminent, and made a Sergeant. After he was made Chief Justice of the King's Bench, he proved, as I said, a great ruler, and nothing must stand in the way of his authority. I find a few things noted of him by his Lordship.

"*(Case of Lady Ivye where he advised that there was subornation, for which Johnson was ruined, and heart-broken.)*

"The lady prosecuted Johnson for this subornation by information in the King's Bench, and the cause was tried before Pemberton. It appeared that Johnson had no concern or words, but by way of advice to his client, but he was borne down and convict: at which the fellow took despair, and died. It was thought his measure was very hard and cruel: and that some mighty point of interest, in her ladyship's lawsuits, depended upon this man's suffering.

"*(Doyly's settlement, a cheat for want of words usual. Q. by whose contrivance? But he advised.)*

"This fraudulent conveyance was managed between Sir Robert Baldock and Pemberton. It is certain it was perused by Pemberton, who was the Counsel chiefly relied on, but not so certain it was his contrivance; for Baldock had wit and will enough to do it. The device was to make two jointures, as of A and B complete, and without words of reference of the one to the other, as "in part," &c. or "together with——in full," whereby the one called upon the other. The use made of this trick was mortgaging both these estates as free, but, in truth, encumbered with the jointure and settlement. For, upon the proffer of A to be mortgaged, and the Counsel demanding a sight of the marriage settlement, that of B was shewed; then, upon the proffer of B, the settlement of A was shewed; and so the cheat passed of both.

"This Chief Justice sat in the King's Bench till near the time that the great cause of the *quo warranto* against the city of London was to be brought to judgment in that Court; and then his Majesty thought fit to remove him. And the truth is, it was not thought any way reasonable to trust that cause, on which the peace of the government so much depended, in a Court where the Chief never shewed so much regard to the law as to his own will; and notorious as he was for little honesty, boldness, cunning, and incontroulable

opinion of himself. After this removal he returned to his practice, and by that (as it seems the rule is) he lost his style of Lordship, and became bare Mr. Sergeant again. His business lay chiefly in the Common Pleas, where his lordship resided: and, however some of his brethren were apt to insult him, his lordship was always careful to repress such indecencies; and, not only protected, but used him with much humanity. For nothing is so sure a sign of a bad breed as insulting over the depressed." (*Life of Lord Guilford, vol. ii. p.* 222.)

This character is a severe one, but it may, perhaps, in some degree be accounted for when we remember that Pemberton "was not wholly for the Court," as Burnet informs us. "His," (Pemberton's) "rise was so particular that he is worth the being remembered; in his youth he mixed with such lewd company that he quickly spent all he had, and ran so deep in debt that he was cast into a gaol, where he lay many years: but he followed his studies so close in the gaol that he became one of the ablest men of his profession. He was not wholly for the Court; he had been a judge before, and was turned out by Scroggs's means, and now he was raised again, and was afterwards made Chief Justice of the other Bench, but, not being compliant enough, he was turned out a second time, when the Court

would be served by none but men of a thorough-paced obsequiousness." (1. *Burnet's Own Times*, 498.) In the year 1683, Pembertons presided at the trial of Lord Russel, "upon which occasion," says Mr. Sargeant Runnington, "he behaved to the prisoner with a candour and decorum seldom found in the Judges of that reign or the succeeding one." Nothing can exhibit in a more forcible manner the gross political prejudices of Roger North than the manner in which he speaks of this trial: "I shall only affirm," says he, "in general, that neither in England nor in any other country in the world had ever any person under a capital charge of treason against the government, a more indulgent (not to say strictly a juster) trial for his life than my Lord Russel had." (*Examen, p.* 463.)

PRICE OF LAW-BOOKS IN FORMER TIMES.

"And here I can but admire at the comparative moity of the books of our Common Law, in proportion to those written of the Civil and Canon law. Oh, how *corpulent* are the *corpuses* of oth those lawes! besides their *shadows* are far bigger than their *bodies*; their *glosses* larger than their *text*.

"Insomuch, that one may bury *two thousand* pounds and upwards in the purchase, and yet hardly compasse a moity of them: whereas all the writers of the Common Law (except they be much

multiplied very lately), with all the Year-Books belonging thereunto, may be bought for *three-score pounds*, or thereabouts: which with some is an argument, that the Common Law imbraceth the most *compendious course* to decide causes, and, by the *fewness* of the books, is not guilty of so much difficulty and tedious prolixity as the Canon and Civil Lawes.

"Yet it is most true, the Common Law-Books are dearer than any of the same proportion. *Quot Libri, tot Libræ*, holdeth true in many, and exceeded in some of them. Yea, should now an *old* Common Law-Book be *new-printed*, it would not quit cost to the PRINTER, nor turn to any considerable account. For the profession of the law is *narrow* in itself, as confined to *few persons*; and those are already *sufficiently furnished* with all authors on that subject, which, with *carefull keeping* and *good using*, will serve *them* and their *sons' sons*, unto the third generation, so that a whole age would not carry off a *new impression* of an *ancient* Law-Book, and (*quick return* being the *life* of *trading*) the tediousness of the *sale* would eat up the *profit* thereof.

"All I will adde is this, that that TAYLOR wh being cunning in his trade, and taking *exact mea sure* of a person, maketh a suit purposely for hi may be presumed to fit him better than those wh (by a general aim) at *randome*, make cloaths f

him: in like manner, seeing our *Municipal Law* was purposely composed by the sages of this land, who best knew the genius of our nation, it may be concluded more proper for our people, and more applicable to all the emergencies in this *Half-Island*, than the Civil Law, made for the general government of the whole empire, by such who were unacquainted with the particularities of our land and nation." (*Fuller's Worthies.*)

Ignoramus.

Of the distaste of James I. for the Common Law and its Professors, something has been already said. In the year 1615, his Majesty, accompanied by the Prince, and a numerous court, visited Cambridge, where strenuous efforts were made to amuse the Royal Guest. The scholars of that learned University, aware of the King's attachment to polemical divinity, prepared a series of sermons and disputations to occupy the mornings, but in their zeal to satisfy his Majesty's controversial appetite, they fed him with Theology even to repletion, and after a *Concio ad clerum* of considerable length, James was heard to complain that care had not been taken to prevent *tediosity.*

By way of diversifying the performances, a new entertainment was brought forward, which is said to have afforded the highest gratification to his Majesty. This was the Comedy of Ignoramus,

written by George Ruggle, of Clare Hall, a person of whom nothing further is known. It was intended to satirize the Professors of the Common Law. "The hero of the piece is a practitioner of the Common Law, so much decried by the courtiers of the day, and the ridicule attached to his cunning, his pedantry, and the barbarous jargon of technical terms, and latinized English, of which his discourse is compounded, was no less agreeable to the monarch, than it proved offensive to the profession of which Ambidexter Ignoramus is the representative." (*Memoirs of the Court of King James*, *v.* ii. *p.* 3.) By the royal command the piece was twice represented; and during the last century it was twice selected for performance by the Westminster Scholars.

In the following scene, Ignoramus informs his clerks, Dulman and Pecus, of his love to Rosabella, and ridicules Museus for his academical education.

"ACTUS I. SCENA III.

Ignoramus. Dulman. Musæus. Pecus.

Phi, phi, tanta pressa, tantam croudum, vt fere pene trusus ad mortem: habebo *actionem de intrusione* contra *omnes et singulos*: Aha, *Mounsier voulez vous intruder par force? Tenaunt, il est playne case, il est point droite, de le ben seance. valde caleor. O chaud, chaud!* precor deum ut

meltaui meum pingue. Phi, Phi. In nomine Dei, vbi sunt Clerici mei iam? *Dulman, Dulman.*

Dul. Hic, magister *Ignoramus, voux hawes Dulman.*

Igno. Meltor, *Dulman,* meltor! Rubba me cum Towallio; Rubba! vbi est *Pecus?*

Pec. Hic, Sr. *Ignoramus.*

Igno. Fac ventum *Pecus.* Ita, sic, sic! Vbi est *Fled-wit?*

Dul. Non est inventus.

Igno. Ponite nunc chlamides vestras super me, ne capiam frigus. Sic, sic. *Ainsi bene faict.* Inter omnes poenas meas, valdè lætor, et gaudeor nunc, quod feci bonum aggreamentum inter *Anglos* nostros: *Aggreamentum,* quasi *aggregatio mensium.* Super inde cras hoysabimus vela, & retornabimus iterùm erga *Londinum.* Tempus est, nam huc venimus *Octabis Hillarii,* et nunc fere est *Quindena Pasche.*

Dul. Iuro, magister, titillasti punctum Legis hodie.

Igno. Puto titillabam. *Si le nom del granteur, le grante soit rased, ou interlind en faiet pol, le faict est grandement suspitious.*

Dul. Et nient obstant si faict Pol, et illud etiam le Coinz.

Pec. At id de vn faict pendu in le Smoake, nunquàm audiui titillatum melius.

Igno. Quid tu dicis, *Musæe?*

Mus. Equidem ego parum intellexi.

Igno. Tu es *Gallicrista*, vocatus *a Coxcombe*; nunquam faciam te Legistam.

Dul. Nunquam, nam ille fuit *Vniuersitans.*

Igno. Sunt magnæ Idiotæ, et Clerici nihilorum isti *Vniuersitantes*: miror quomodo spendisti tuum tempus inter eos.

Mus. Vt plurimum versatus sum in *Logicâ.*

Igno. Quæ villa? quod Burgum est *Logicâ?*

Mus. Est vna artium liberalium.

Igno. Liberalium: Sic putabam: In nomine dei, stude Artes parcas et lucrosas: non est mundus pro Artibus liberalibus iam.

Mus. Deditus etiam fui amori Philosophiæ.

Igno. Amori? Quid? Es pro Bagaschijs et Strumpetis? si custodis malam regulam, non es pro me: sursum reddam te in manus Parentum iterum:

Mus. Dij faxint.

Igno. Quota est Clocka nunc?

Dul. Inter octo, & nina. *Ig.* Ite igitur ad mansorium nostrum, cum Baggis & Rotulis. Quid id est? videam hoc instrumentum, mane PETIT dum calceo spectacula super nasum. O ho, ho, scio iàm *Hæc Indentura facta est inter Rogerum Ratledocke de Carton in Com. Brecknocke.* O ho, *Richard Fen, John Den.* O ho, *Proud Buzzard Plaintiffe, aduersus Peakegoose defendant.* O ho, hic est defalta literæ, emenda, emenda, nam in nostra lege vna Comma euertit totum *placitum*

Ite iam, capiato tu hoc, tu hoc ingrossa, tu trussato sumptorium pro iornea.

Exeunt Clerici.

IGNORAMVS. *Solus.*

Hi, ho, *Rosabella*, hi, ho! Ego nunc eo ad *Veneris Curiam* lætam tentam hic apud *Torcol:* Vicecomes eius *Cupido* nunquam cessauit, donec *inuenit me in Baliua sua:* Primum cum amabam *Rosabellam* nisi paruum, misit *paruum Cape*, tum *magnum Cape*, & post *alias Capias*, & *pluries Capias*, & *Capias infinites*, & sic misit tot *Capias*, vt tandem *Capauit me vtlegatum* ex omni sensu & ratione mea. Ita sum sicut musca sine caput, buzzo & torno circum circa, & nescio quid facio; cum scribo instrumentum, si fœmina nominatur, scribo *Rosabellam*, pro *Corpus cum causâ*, *Corpus cum caudâ*, pro *nouerint uniuersi*, *amauerint vniuersi*, pro *habere ad rectum*, *Habere ad lectum*, & sic vasto totum *Instrumentum*, Hei, ho, ho, hei, ho."

In the scene which we give below, Ignoramus pays his court to his mistress and promises her a valuable jointure. The "Versus legales" are peculiarly piquant.

"ACTVS I. SCÆNA V.

Torcol. Rosabella. Ignoramus.

Surda.

Qvid fles, peruicax? num ego te caste et pudice duxi, ideo vt mihi, tibique adeo, tuoque aduersere

commodo? Aut huic libenter nube aut *per aquesta Cruz de Dios* te hinc aueham *Fessam* iterum, vbi te aut vendam aut prostituam. Ego tibi bene cupio. Tune vis? Responde quid ais?

Ros. Patrue, tu sapis, tibi quod videbitur, æquum est id me facere.

Tor. Recte iam, atque vt decet.

Ros. Dissimulandum amorem video, ne ruam in peius: Non vnquam ego te *Antoni.*

Tor. Hanc ego illi custodem apposui *Nanam,* quæ tres menses licet integros surda sit iam, fidelis tamen, atque ex signis intelligit satis. (*He makes signes to her.*)

Sur. Recte intelligo, vt illam arcte custodiam; neue quopiam longius abeat à foribus.

Tor. Intelligit.

Sur. Neue iuuenem eam patiar alloqui.

Tor. Bene.

Sur. Quamprimum ille hanc allocutus sit, introeat illicò.

Tor. Eia, quàm citò.

Sur. Sin secus, interminare mihi te me verberaturum vsque ad necem. Curabitur quod iubes.

Tor. Signior, mea Cognata hæc summopere te super omnes mortales amat: Experire: ego hinc abeo, nam mihi negotium est: memento signi, & pecuniæ.

Igno. Nulla erit defalta. Sed tu nos admittas.

Sur. Fiet, inquam.

Igno. Ha he, *Rosabella* mea, hem hem hem, *Madame, & vosmet Magistri iurati, hæc est Actio super casum.* Phi phi, lingua vadit ad verba accustomata : Puto me placitare iam.

Sur. Quantum video, hic homo stultus est.

Igno. Madame, pardona mihi, nunquam amaui antehac. Sed veniam ad punctum, & *iungemus issue.* Viane facere maritagium mecum ?

Ros. Haud equidem tali me dignor honore.

Igno. Profectò, *Rosabella,* amo te plusquám *rosa solis.* Dico tibi, Amor tuus fecit me legalem Poetam. Vis versus meos ?

Ros. Si placet, senior.

Igno. Hem hem, Versus legales de *Rosabella.* Hem hem.

Si possem, vellem pour te, Rosa, ponere pellem:
Quicquid tu vis, croua, & habebis singula broua :
Et dabo Fee simple, *si monstras Loue's prettie dimple,*
Gownos, Silkcotos, Kirtellos, & Petticotos ;
Farthingalos Biggos, Stomacheros, & Perriwiggos ;
Pantaflos, Cuffos, Garteros, Spanica ruffos.
Buskos & soccos, Tifanas, & Cambrica Smockos :
Pimpillos, pursos : Ad ludos ibis & vrsos.

Anglice Beargarden.

Annon hæc sunt bona in lege ?

Ros. Euge optima.

Igno. Ergo ad ludos ibis & vrsos. Facies quicquid vis, puella, si alijs sit *clausa Curia :* Tene, *est billa vera.*

Ros. Portabo in sinu meo.

Igno. Amas me ?

Ros. Amaret quis non ?

Igno. Ais? dabo tibi *bonam iuncturam,* faciam ames me plus & plus. Audi *iuncturam tuam. Ego Ambidexter* Ignoramus *infeoffo te vxorem meam* Rosabellam *in Taile special de situ Manerij de Tongwell, cum capitali messuagio ; Et do tibi omnia & singula Messuagia, Toftos, Croftos, Cottagia, & Columbaria, Molendina, Fullonica, Aquatica, Ventritica, Gardinos, Tenementa, Boschos, subboschos, Jampnos, Brueras, Moros, Morischos salsos, Morischos freschos, Juncaria, Turbaria, Alneta, Mosseta, Communiam pasturæ, liberam warrenam, piscariam, faldam, & Decimas garbarum, bladorum, granorum, agnellorum, foeni, lini, canabis, & telonium, Stallagium, Pontagium, Picagium, Escheta Catalla felonum, wauiata, extra, HÆRAS, wrecca maris.*

Ros. O nimium est.

Igno. Mane dum capio anhelitum ; & dabo tibi decies tantum.

Ros. Quanquam intus fleam, risum expressit mihi.

Sur. Satin sanus hic homo? Videtur fœminâ, & Picâ, & Psittato loquacior.

Igno. Redde mihi amorem iam quid pro quo.

Ros. Æquum postulas.

Igno. Ergo da mihi osculum, da quæso.

Ros. Durè. Cor dura. O pulchrum *Amasium!* ô patrui auaritiam!

Igno. Lego pulchras lineas in facie tua———

He offers to kisse her.

Sur. Abi, abi.

Igno. Habeo *quare impedit* pro te. Volo tibi *sigillare et deliberare* vnum osculum.

Sur. Skats, scat, ah.

Igno. Vale, *Rosabella* mea, iam vsque ad mox. Hoc osculum mihi facit bonum apud cor. Possum volare super tria clocheria nunc Sed ego ero satis callidus pro *Torcol.* Nam cum venio in *Angliam*, maritabo diuitem vxorem; & tum tenebo hanc *in Commendam* tantum pro Transi-tempus. Ibo nunc pro coronis.

Sur. Illum amas vti video.

Ros. Mortem magis.

Sur. Bene facis. (*Exit Ignor.*)

Ille tibi dabit———

Ros. Malum.

Sur. Ergo non amas illum iuuenem.

Ros. Non vitam æquè.

Sur. Odisse te inuis; optimè. Equidem immeritò te suspicatur herus meus.

Ros. Quàm crucior. *Antonium* me non amare nunc, vel fingere? fingendum est tamen, vt suspitione libera ad illum aufugiam facilius, si ad *Ignoramum* ducar. Verum audiui *Antonium* hodiè hinc *Londinum* abiturum. O perfidum, si id nunc faciat! fidem dedit mihi: quod si iam me deserit, perij.

Sur. Nam si illi nubes, affluès diuitijs.

THE CRIME OF MULTIPLICATION.

The reader must not imagine, that we are going to discuss Mr. Malthus's doctrine. The crime of multiplication related only to the multiplication of gold, for, as yet, we have no enactments directly forbidding the multiplication of man. In the reign of Henry IV. (5 Hen. IV. cap. iv. repealed by Stat. 1 W. and M. sess. i. c. 30.) a statute was made forbidding the multiplication of the precious metals, which gave rise to the following case. (*Dyer*, 88. *a.*)

Eden and Whally's Case.

One Eden confessed himself guilty of multiplication; *ss.* That he had practised the making of a quint-essence and the philosopher's stone, by which all metals might be turned into gold or silver, and also accused Whally, now a prisoner in the Tower, of urging and procuring to use and practise this art, and that Whally had laid out money in red wine and other things necessary for

the said art; and because this offence is only felony, Eden, the principal, was pardoned by the general pardon. But Whally, who was but accessary, in this case excepted, as one of those who were in the Tower. The question was moved, whether Whally should be discharged; quære the statute of 5 Henry IV. c. 4, which enacts, that none should use to multiply gold or silver, nor use the craft of multiplication; and if any the same do, that he incur the pain of felony in this case. Quære, whether there can be any accessary in this new felony?

In the margin of this Report, Lord Chief Justice Treby has cited a case from Moore, thus:—"In Mr. Darey's action on the case of monopolized cards, there was cited a commission in the time of Henry VI. directed to three friars and two aldermen of London, to enquire, whether the philosopher's stone was feasible; who returned, that it was; and upon this a patent was made out for them to make it." (*See Moore*, 675.)

We know not what to admire most in this transaction: the wisdom of his Majesty's choice in selecting three friars and two aldermen of London to prosecute so philosophical an inquiry,—the modest confidence of the worthy commissioners in reporting the matter so practicable,—or the King's sly hit in directing a patent to be immediately made out for it, in order to secure

to the reverend and corpulent philosophers the full benefit of their valuable discovery.

THE PERVISE OF PAUL'S.

The word Pervise is said to be derived from *Paravisus*, the porch of a church, or the outer court of a palace or great house. In the early times the Pervise of St. Paul's was frequented by the lawyers as a kind of judicial exchange, where they were accustomed to meet their clients for the purpose of consultation. "In an afternoon," says Fortescue, "the suitors of the court betake themselves to *the Pervise*, and other places, to advise with the Sergeants at Law, and others their Counsel, about their affairs." (*De Laudibus*, &c. c. 51.) "Ibi," says Spelman, "Legis periti convenere ut clientibus occurrerent, non ad tyrocinia juris quas *Motas* vocant exercenda." (*Ad. v. Parvæ*, &c.) Dugdale tells us, that at St. Paul's, "Each Lawyer and Sergeant at his pillar, heard his client's cause, and took notes thereof upon his knee, as they do at this day at Guildhall. After the Sergeants' feast ended," continues Dugdale, "they do still go to Paul's in their habits, and there choose their pillar whereat to hear their client's cause, (if any come,) in memory of that old custom." (*Origines Jurid. p.* 142.) It seems that the Temple church was a place of common resort in the same manner. "Item, they, (the

lawyers,) have no place to walk in, and talk and confer their learnings, but in the church; which place all the term-times hath in it no more quietness than the Pervise of Paul's, by occasion of the confluence and concourse of such as are suitors in the law." (*Dugd. Orig. Jurid. p.* 195.)

Even as early as Chaucer's time, the Pervise of St. Paul's appears to have been appropriated to this use:

"A Sergeant at Law ware and wise,
That often had been at the Pervise."

CURRAN'S BON MOTS.

For the following observations on the genius of Curran's wit we are indebted to the admirable Life of that celebrated man, by his son, Mr. W. H. Curran.

"Numerous specimens of his wit have been preserved, from which its style, rather than its extent, may be collected. It may be generally observed of his wit, that it delighted, not so much from the naked merit of any single efforts, as from the incessancy and unexpectedness of its combinations. It also possessed one quality, which is above all value, that of never inflicting an undeserved wound. In all those cases where the words might seem to intend a personal reflection, he never failed to neutralize the poison by a playful

ironical manner, which testified his own disbelief of what he was asserting. It would be difficult to produce an equal number of pointed sayings, in which the spirit consists so little in particular or general satire, neither do they appear, like the humorous sallies of many celebrated wits, to have been dictated by any peculiar set of speculative opinions. The sceptic, the misanthrope, the voluptuary, and all, in short, who habitually look at the business of life through the medium of their particular doctrines, are perpetually betraying in their mirth, some open or lurking application to their favourite tenets; the instances of their wit, if accurately examined, may be resolved into illustrations of the system. Thus, the humour of Voltaire is for ever reminding us of his impiety, that of Swift of his splenetic contempt of human folly; but almost all of Mr. Curran's lively sayings were suggested at the moment by the immediate circumstances and persons, or verbal associations. They are in general insulated and individual, ending where they begun, and not referring to any previous systematic views of human affairs.

"An entire collection of the Bon-mots attributed to Mr. Curran, would fill many pages. The following are selected as a few specimens. In all of them it will be seen, how much less the essence

depends upon the satire than upon the fanciful combination of words or images.

"Mr. Curran was engaged in a legal argument: behind him stood his colleague, a gentleman whose person was remarkably tall and slender, and who had originally designed to take orders. The Judge observing that the case under discussion involved a question of ecclesiastical law, 'Then,' said Mr. Curran, 'I can refer your Lordship to a high authority behind me, who was once intended for the *church*, though, (in a whisper to a friend beside him,) in my opinion, he was fitter for the steeple.'

"An officer of one of the courts, named Halfpenny, having frequently interrupted Mr. Curran, the Judge peremptorily ordered him to be silent, and sit down. 'I thank your Lordship,' said the Counsel, 'for having at length *nailed that rap to the counter*.'

"'I can't tell you, Curran,' observed an Irish nobleman, who had voted for the Union, 'how frightful our old House of Commons appears to me.' 'Ah, my Lord,' replied the other, 'it is only natural for murderers to be afraid of ghosts.'

"A deceased Judge had a defect in one of his limbs, from which, when he walked, one foot described almost a circle round the other. Mr. Curran being asked how his Lordship still continued to walk so fast? answered, 'Don't you see that

one leg goes before like a tipstaff, and clears the way for the other.'

"Mr. Curran, cross-examining a horse-jockey's servant, asked his master's age. 'I never put my hand in his mouth to try,' answered the witness. The laugh was against the counsel, till he retorted, 'You did perfectly right, friend, for your master is said to be a *great Bite*.'

"A miniature-painter, upon his cross-examination by Mr. Curran, was made to confess, that he had carried his improper freedoms with a particular lady so far as to attempt to put his arm round her waist. 'Then, Sir,' said the counsel, 'I suppose you took that waist (*waste*) for a *common*.'

"'No man,' said a wealthy, but weak-headed barrister, 'should be admitted to the bar, who has not an independent landed property.' 'May I ask, Sir,' said Mr. Curran, 'how many acres make a *wise*-acre?'

"'Could you not have known this boy to be my son, from his resemblance to me?' asked a gentleman. Mr. Curran answered, 'Yes, Sir, the maker's name is stamped upon the *blade*.'

"Mr. Curran being asked, 'what an Irish gentleman, just arrived in England, could mean by perpetually putting out his tongue?' answered, 'I suppose he's trying to catch the English accent.'

"At a public dinner, he was defending his

countrymen against the imputation of being a naturally vicious race. 'Many of our faults, for instance,' (said he,) arise from our too free use of the circulating medium, (pointing to the wine,) but I never yet heard of an Irishman *being born drunk*.' " (*Life of Curran, vol.* ii. *p.* 339.)

MR. CURRAN AND LORD CLARE.

"Lord Clare had a favourite dog that sometimes followed him to the Bench. One day, during an argument of Mr. Curran's, the Chancellor, in the spirit of habitual petulance which distinguished him, instead of attending to the argument, turned his head aside, and began to fondle the dog. The counsel stopped suddenly in the middle of a sentence,—the judge started.—'I beg pardon,' said Mr. Curran, 'I thought your *Lordships* had been in consultation; but as you have been pleased to resume your attention, allow me to impress upon your excellent *understandings* that—, &c.' " (*Curran's Life, by his Son.*)

LEGAL BIOGRAPHY.

The Life of a Lawyer, like that of a Scholar, has been generally supposed to offer few materials for the pen of the biographer; but this idea is erroneous. The History of a celebrated Lawyer is, for the most part, so closely connected with that of his age and country, as to acquire an interest

far above that which usually distinguishes the Memoir of a private individual. His professional avocations are frequently only pursued as the means of political advancement, a circumstance which will always give his biography a degree of public interest. At the same time, an eminent Lawyer must necessarily fill a conspicuous place in society, and his Life will, therefore, be more or less connected with that of the most distinguished men of his day. The personal character also of a man who has occupied the first rank in an intellectual and arduous profession, can never be unworthy of study. It is singular, therefore, when we remember the many eminent names which adorn the annals of our law, that our legal biography should still remain so imperfect a branch of our literature. With the view of briefly shewing what has already been accomplished with regard to this subject, the following observations are offered to the reader.

Amongst the earliest works of Legal Biography is the Life of Sir Thomas More, and of none of our lawyers are the Memoirs so numerous as of this celebrated man. The earliest printed Memoir of him appears to be a 4to. volume, entitled *Historia aliquot nostri seculi martyrum, viz. Thomæ Mori, Joan. Fisheri, &c.* 1550. The next in point of date is his Life by Stapleton, written in Latin, and published in the year 1588; "upon

the whole," says Mr. Dibdin, (*Introduction to Utopia, p.* xl.) "a valuable and elegantly written composition." It is rarely to be met with. In 1626, another Life was published, under the title of "*The Mirror of Virtue in worldly greatness; or, the Life of Sir Thomas More,*" which appears to be an incorrect transcript from Roper's Life of More. (*See Lewis's Preface to Roper's More, p.* 24.) About the same time appeared "*The Life and Death of Sir Thomas More, Lord High Chancellor of England. Written by M. T. M., &c.*" 4to. without date or place. The author of this Life, (which was reprinted in 1726,) was the Chancellor's great grandson, Thomas More. It is very scarce, and is termed, by Mr. Dibdin, "in every respect the most valuable piece of biography extant of More;" (*Introduction, &c. p.* xliv.)—an opinion which may, perhaps, be thought too eulogistic.* Hoddesdon's Life is next in date, "*Tho. Mori, Vita et Exitus; or, the History of Sir*

* A different character of this volume is given in Jortin's Life of Erasmus, vol. i. p. 174. "We have a Life of Sir Thomas More, written by this Mr. More, who was a narrow-minded zealot, and a very fanatic. However, we will extract a few passages from it. Wood, the Antiquary, says of this book, that it was incomparably well written, and the judgment is such as might have been expected from the man."

Thomas More, sometime Lord High Chancellor of England, collected out of several Authors. By J. H. [*oddesdon,*] *Gent. London.*" 1652, 8vo. 1662, 12mo. This work is chiefly, as its title expresses, a compilation from the preceding volumes. In 1716, the first edition of the Life of More, by his son-in-law, Roper, appeared, edited by Hearne: and in 1729, Mr. Lewis, the author of the Life of Caxton, published the same Life from another MS. and added to it a Preface, and some valuable Notes. This volume, which is by far the most interesting of all the Memoirs of Sir Thomas More, has been several times reprinted; a very beautiful edition of it appeared in the year 1822, from the Chiswick press, edited by that intelligent scholar, Mr. W. S. Singer.* Two more modern Lives remain to be mentioned, that prefixed by Dr. Warner to his edition of the Utopia, (1758,) and Cayley's "Memoirs of Sir Thomas More," 2 vols. 4to. 1808. The reader who is desirous of further information respecting the Biography

* We observe that Mr. Singer is inclined to give credit to the accusations against More respecting his persecution of Heretics. (*See Ante, p.* 53.) "The only serious and unrefuted charge which can be brought against his memory, is the severity of misguided zeal with which he sought out and punished the early reformers, whom he *unrelentingly persecuted* with the pen and the scourge, as pernicious Heretics." (*P.* xviii.)

of Sir Thomas More, may be referred to Mr. Dibdin's Biographical Introduction to his reprint of Robinson's Translation of the Utopia.

One of the most singular, and, in some respects, the most entertaining pieces of biography in the language, is the Life of the Lord Keeper Williams, by his Secretary, Dr. Hacket, afterwards Bishop of Lichfield: "*A Memorial offered to the Great deservings of John Williams, D.D. who some time held the places of Lord Keeper of the Great Seal of England, Lord Bishop of Lincoln, and Lord Archbishop of York.*" The style of this work (of which the reader has already, in the course of these volumes, had an opportunity of judging) is most singular, and partakes very largely of the pedantry which prevailed at the period when the author wrote. The fanciful allusions, the recondite metaphors, and the quaint expressions with which it abounds, render the continuous perusal of it rather a tiresome task; but the zeal and fervor of the writer, and his intimate acquaintance with the subject of his memoir, are sufficient to overcome the distaste which his pedantry inspires. The details which this work contains of the political events and the Court intrigues of the reign of James I. give it no inconsiderable value in the estimation of the general historian; while the curious matter which we occasionally find in it relative to the state of the law, and the character

of the lawyers of that day, render it a favourite with the legal antiquary. In many of these particulars it will almost bear a comparison with that admirable work, the Life of Lord Guilford, of which we shall shortly have occasion to speak.

There is also another Life of Lord Keeper Williams, by Ambrose Phillips: "*The Life of John Williams, Lord Keeper of the Great Seal, Bishop of Lincoln and Archbishop of York in the reigns of King James and King Charles I. wherein are related several remarkable occurrences of those times, both in Church and State.*" 12mo. Lond. 1700. This Life is little more than an Abridgment of Bishop Hacket's: "Bishop Hacket's," says Phillips, in his Preface, "is the great storehouse from whence I have taken my materials for the following Life."

Of the other celebrated lawyers of this day, (and they were many,) we have few memorials. Of Selden, "the Arch-antiquary," as he has been well designated, a biographical account is prefixed by Dr. Wilkins, to the collected edition of his works, which has served as the basis of Dr. Aikin's judicious "Life of Selden." There is not, however, much to interest the reader in the personal history of this celebrated man, whose life was more devoted to reflection than to action.

The Life of Sir Thomas Egerton, afterwards Baron Ellesmere, who preceded Bacon on the

Woolsack, was written, we believe, some years ago, by a member of the Bridgwater family, who trace their descent from the Chancellor, but as this volume was only printed for private distribution, it has never fallen into the hands of the writer of the present article.

To these volumes the legal biography of the reign of James I., a period rich in eminent lawyers, is confined. Considering this reign as the termination of the *jus antiquum*, or feudal system of jurisprudence which prevailed up to this period, and as the commencement of the *jus novum*, or the system of personal and mercantile law, it affords a rich field for curious speculation to the legal historian and antiquary. At the same time the personal characters of the eminent lawyers of that day are well worthy of attention. The lives of Lord Bacon and Sir Edward Coke, more particularly, have never yet been written in the manner which they deserve.

Amongst the most important *desiderata* of legal biography, a Life of Lord Bacon is undoubtedly the most conspicuous. The personal character of that extraordinary man, his eminence as a philosopher, his profligacy as a politician, and his meanness as a man,—the many important and interesting transactions in which he took part—the state of the law, and more especially of constitutional law, at the period when he lived, all

contribute to render a well-written life of him a most invaluable accession to legal literature. The Life of Bacon by Mallet is, as Mr. Butler has observed, "universally admitted to be very defective." But who shall attempt the task? Where shall we find that rare and happy union of the philosopher, the lawyer, and the man of letters, which such a labour would require? The materials for so noble a piece of biography are ample, but what hand shall venture to arrange them? We are indeed told by Mr. Butler that we may expect a Life of Lord Bacon from the pen of Mr. Basil Montagu. (*Reminiscences*, p. 316.) The preceding observations are, perhaps, therefore premature.

Closely connected with the biography of Lord Bacon is that of his great legal rival Sir Edward Coke, whose life and writings furnish a rich field for the juridical historian. The account of him which is to be found in the Biographia Britannica, is compiled with great diligence and judgment, and would be of very considerable assistance to any future biographer. There exist, we believe, several original letters from Sir Edward Coke in the British Museum.

The only work of legal auto-biography which we possess is the Life of Lord Clarendon. "*The Life of Edward, Earl of Clarendon, Lord High Chancellor of England, and Chancellor of the*

University of Oxford; containing an account of his life, from his birth, to the restoration in 1660. *Written by himself.*" We are so much more accustomed to regard Clarendon in his character of a politician than of a lawyer, that we can scarcely class this admirable work under the head of legal biography. In truth, Clarendon's short professional career has little in it to attract our attention, while his history as a statesman is full of interest and instruction. Of the earlier part of his professional life, and of his intimacies with many of the celebrated lawyers of his day, he has left some pleasing details, which we have already extracted. (*See ante, p.* 156.) In an historical point of view the life of Clarendon is highly valuable, but it contains little matter calculated to interest the mere lawyer.

The half century which followed the Restoration is, perhaps, the richest period in our annals, to the legal biographer. During this short space of time the greatest and meanest, the most excellent and the most infamous characters may be found occupying the judgment seats of our Courts of Justice. Within this period flourished Hale and Jefferies, Somers and Scrogge. Immediately after the Restoration the Court appeared to be anxious that the great offices of the law should be bestowed upon persons worthy of filling them, and Clarendon, who, whatever may have been his

errors, never displayed that open political profligacy which afterwards distinguished the measures of his master's advisers, was entrusted with the arrangement of the new law appointments. A number of respectable men were consequently placed upon the Bench; but when Clarendon lost his favour, and the abandoned designs of the Court began to develope themselves more clearly, several of the most unprincipled men in the nation were raised to the highest dignities of the law. The judicial biography of the reigns of the two last Stuarts furnishes some excellent lessons, and well deserves to be recorded. The materials for such a work also are copious and accessible. There are, indeed, few original memoirs of the lawyers of that day; but in the pages of the historians and other writers much curious information relative to the state of the Bench and the Bar at this period is to be found. The "Examen" of Roger North may be particularly mentioned. Of individual memoirs there exist two or three small volumes containing an account of Jefferies,* but the history of that infamous man

* A judicious memoir of Jefferies would be a valuable addition to the English Historical Library. The question of the guilty connivance of James II. at the cruelties practised in the west has never been thoroughly investigated. Mr. Thorpe, Bookseller, Bedford-st. Covent Garden, possesses a collection of tracts and pam-

is best read in the State Trials. The only work of this period which has any claims to the title of Legal Biography is the inimitable Life of the Lord Keeper Guilford, by his brother, Roger North. Of that work we shall be allowed to speak a little more particularly.

There is not, perhaps, in all our biographical literature, a work more perfect in its kind than the Life of Lord Guilford. If the excellence of a biographer consists in his power of drawing so accurate and natural a likeness that the original shall seem to stand before us, there are few biographical writers more successful than Roger North. After reading the Life of the Lord Keeper we seem absolutely to have been acquainted with him, so powerful and natural is the manner in which his character is drawn. The close intimacy which Roger North enjoyed with his brother gave him an opportunity of finishing his portrait with the utmost nicety and precision of pencil, and he has, indeed, produced a resemblance so extremely faithful, that even the defects of his brother's character are accurately pourtrayed. The Lord Keeper North occupied the debateable ground between the honest and the dishonest lawyers of his day. He was a man of low principle, with suffi-

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phlets relative to Jefferies, which appears to contain some curious articles.

cient wisdom and good feeling not to degrade himself to the level of Jefferies or Scroggs, and yet without the integrity or nobleness of mind which would have enabled him to approach the rank of Hale. The intellect and feelings of Roger North did not rise above the same standard; and he has accordingly described his brother's character just as it existed, under the firmest conviction of its superior excellence.

But it is not merely as a faithful biographical sketch that the Life of Lord Keeper North is of value; it presents also a lively and amusing picture of the times, and some admirable portraits of several of the most celebrated lawyers who flourished at that period. The account of Sir Edmund Saunders we have already extracted for the amusement of our readers. (*See ante, vol.* i. *p.* 70.)

It should be observed, however, that Roger North's narrative must often be taken with many grains of allowance. A more prejudiced writer has seldom existed. His bias in favour of his prerogative notions frequently leads him to do great injustice to some of the best men of his day, and amongst the rest to Sir Matthew Hale. Wherever the Court is concerned he shews himself a decided partizan, and does not hesitate to inform his readers that in his opinion there cannot be a good lawyer unless he be at the same time a good

prerogative man. This spirit has occasioned various misrepresentations in his book, which, indeed, stands more in need of annotation than any memoir in the language.

Perhaps one of the best subjects in our literature for the pen of the biographer is the Life of Lord Somers, whose character and actions have never been recorded in a manner suitable to their worth and dignity. On this subject something has already been said, (*see ante, vol.* ii. *p.* 139,) and it only remains to notice the biographical accounts of this celebrated man which we at present possess. The earliest work on this subject appears to be one entitled "Memoirs of the life of John, Lord Somers," published soon after his death, in 1716, and styled by Mr. Cooksey "a very paltry performance." A work which that gentleman could justly esteem inferior to his own, must indeed be a wretched production. Mr. Cooksey proposing to write "a compendious History of Worcestershire," collected various memoranda relative to the history of the celebrated men connected with that county; and the jejune and scanty memorials of Lord Somers which he thus threw together, he gave to the world under the title of "*An Essay on the Life and Character of John, Lord Somers.*" We may form some opinion of the intellect of this writer when we find him at the commencement of his Essay stating that the only imperfection or blemish

charged upon Lord Somers by his bitterest enemies was the lowness of his birth, and yet accusing him, at the conclusion, of the most degrading profligacies. Fortunately this Essay is only a fragment. To this Essay are also added "*Sketches of the Life and Character of Philip, Earl of Hardwicke,*" which merely consist of several letters addressed to Mr. Cooksey by persons who were in possession of some facts relative to the History of Lord Hardwicke. The most interesting portions of these letters have been already laid before the reader.

In the year 1812, there appeared *An account of the Life and Writings of Lord Chancellor Somers, including remarks on the public affairs in which he was engaged, and the Bill of Rights, with a Comment. By Henry Maddock, Esq.* The title of this work (which is also a fragment) promises much, but the manner in which Mr. Maddock has executed his task is by no means unexceptionable. The style is crude, unpleasing, and devoid of ease. At the same time it must be admitted that Mr. Maddock has displayed considerable diligence in his biographical duties, and that he has properly appreciated the character of Lord Somers.

Of the "*Life of Sir Matthew Hale,*" by Burnet, it is unnecessary to speak, as that work is probably well known to the reader. Its merits justify the high eulogium of Johnson.

Of Holt, the worthy successor of Sir Matthew

Hale, a good biographical account is wanting. The volume which bears the title of "*The Life of the Rt. Hon. Sir John Holt, Knt.* (*London*, 1764,)" is merely a collection of arguments, and does not contain half a dozen pages devoted to the biography or character of Holt.

Amongst the lawyers of the last century there are few whose characters and celebrity are such as to induce us to regret that there exist no more perfect memorials of their lives. Of Lord Somers, who may be more properly referred to the preceding century, we have already spoken. The Life of Lord Mansfield has been written, but in a manner by no means equal to the dignity of the subject.* It appears also that Mr. Ruffhead, the

* The author of the Pursuits of Literature has made some severe observations on this production, which he calls "a long life in 4to. of the great Earl of Mansfield, Lord Chief Justice of the Court of King's Bench, by Mr. Halliday, in a very peculiar style indeed. For the greater part, it is a bundle of reports and law pleadings strung together. It is astonishing to me that conveyancers and attorneys, who really appear not to know how to construct a single sentence without provoking a smile at some error in grammar, in language, or in metaphor, should think themselves qualified to deliver down to posterity the lives of great men. Luckily Mr. Halliday's zeal does not offend us in rhyme. The friendship and the verse of Pope, as well as the splendour of his own abilities and the dignity of their high exertion,

editor of the Statutes, and the author of the Life of Pope, applied to his Lordship for materials for writing his Life, a request with which Lord Mansfield had the discretion not to comply. If we may form a judgment of Mr. Ruffhead's genius for biography, from his Life of Pope, his Lordship's refusal is not to be regretted. On this occasion Lord Mansfield is reported to have said that his Life was not of importance enough to be written, adding "if you wish to write the Life of a truly great man, write the Life of Lord Hardwicke, who, from very humble means, and without family support, became Lord High Chancellor of England, on account of his virtue." (*See Seward's Anecdotes of Distinguished persons, vol.* ii. *p.* 360, *and another version of the same anecdote in Strictures on the Lives and Characters of the most eminent Lawyers of the present day,* 1790, *p.* 29.) It seems questionable whether the incidents of Lord Mansfield's life would have afforded sufficient materials for an interesting biographical work. A spirited sketch of his professional life has been given by Mr. Butler. It first appeared in Mr. Seward's Collection of Anecdotes, and has been subsequently reprinted by its author.

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have secured an eternity of reputation to the Earl of Mansfield, Lord Chief Justice of England, which can never fall, even by Mr. Halliday's attempt." (*Pursuits of Literature, p.* 285, *Note,* 16*th Edit.*)

Notwithstanding Lord Mansfield's hint, the Life of Lord Hardwicke has never yet been written. Cooksey, indeed, has appended a few fragments respecting him to his Sketches of the Life of Lord Somers; but the authenticity of many of these details seems doubtful. In the lately published memoirs of Horace Walpole also, some bitter notices of Lord Hardwicke may be found. (*See Post.*)

Of Sir William Blackstone a short memoir is prefixed to the edition of his reports by Mr. Clithero. A volume was also published in the year 1782, under the copious title of "*The Biographical History of Sir William Blackstone, late one of the Justices of both Benches, a name as celebrated at the Universities of Oxford and Cambridge as at Westminster Hall. And a Catalogue of all Sir William Blackstone's Works, manuscript as well as printed, with a nomenclature of Westminster Hall. The whole illustrated with notes, observations, and references; also, a Preface and Index to each part. By a Gentleman of Lincoln's Inn.*" Who this Gentleman was we know not, but he certainly produced one of the most extraordinary pieces of biography in our literature. A more crude collection of ill-assorted and irrelevant anecdote, and of hasty and injudicious criticism, was never suffered to escape from the press.

The "*Memoirs of the Life of the Right Honor-*

able Sir John Eardley Wilmot, Knt. late Lord Chief Justice of the Common Pleas, By John Wilmot, Esq." is a well written, and upon the whole an interesting work. The character of Sir Eardley Wilmot was not perhaps a very open and simple one, nor is there any thing very eventful in his biography, but his connexion with many distinguished persons of his day, of whom we meet with occasional anecdotes in these memoirs, gives them considerable value.

Before concluding this very imperfect sketch, we cannot forbear to mention a piece of modern legal biography, with which it is probable that most of our readers are acquainted, *The Life of Mr. Curran,* by his son, Mr. W. H. Curran. This judicious and excellent work, so creditable at once to the subject and to the writer of it, is well deserving of a distinguished place in the library of every lawyer. Mr. W. H. Curran had a most difficult and delicate task to perform, and he achieved it in a manner highly honourable to his talents and his feelings. The affectionate forbearance displayed by the writer in alluding to his father's errors, from which it is said he had himself been the chief sufferer, is so highly pleasing, that the paragraph is transcribed in the note.*

* "Such were his excellencies, or his harmless peculiarities, and the office of enumerating them has been

THE LAW OF GIBBETS.

"One was ordered by the judge of assize to be hanged in chains; the officers hung him *in privato solo*; the owner brought trespass; and upon Not Guilty, the jury found for the defendant, and the court would not grant a new trial, it being done for convenience of place, and not to affront the owner." (*Sparks* v. *Spicer*, 2 *Salk.* 648.)

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easy and attractive. But biography, if the fidelity to truth which it demands be too rigidly exacted, may become a hard task, converting a friend, or one nearer than a friend, into the ungracious character of an accuser. Every lover of genius would wish that this account of Mr. Curran's life would here have closed, without rendering it liable to the charge of having suppressed any circumstance which it would not have been to the interest of his name to have disclosed. But the question will be asked, has this been a faithful picture?—have no shades been designedly omitted?—has delicacy or flattery concealed no defects, without which the resemblance cannot be true? To such inquiries it is answered, that the estimable qualities which have formed the preceding description, have not been invented or exaggerated; and if the person who has assumed the duty of collecting them, has abstained from a rigorous detail of any infirmities of temper or conduct, it is because a feeling more sacred and more justifiable than delicacy or flattery has taught him, and should teach others, to regard them with tenderness and regret. In thus abstaining from a cruel and unprofitable analysis of failings, to which the most gifted are c

"Mich. 10. W. 3. per Holt, Chief Justice,—if a man be hung in chains upon my land, after the body is consumed, I shall have gibbet and chain,—said upon a motion for a new trial." (1. *Lord Raymond*, 738.)

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the most prone, no deception is intended. It is due to that public to whom Mr. Curran's merits have been submitted as deserving their approbation, to admit with candour, that some particulars have been withheld which they would not have approved; but it is also due to his memory to declare, that in balancing the conflicting elements of his character, what was virtuous and amiable will be found to have largely preponderated. He was not perfect, but his imperfections have a peculiar claim upon our forbearance, when we reflect that they sprung from the same source as his genius, and may be considered as almost the inevitable condition upon which that order of genius can be held. Their source was in his imagination. The same ardour and sensibility, which rendered him so eloquent an advocate of others, impelled him to take too impassioned and irritating views of questions that personally related to himself. The mistakes of conduct, into which this impetuosity of temperament betrayed him, cannot be defended by this or any other explanation of their origin, yet it is much to be able to say, that they were almost exclusively confined to a single relation, and that those who, in consequence, suffered most, but who, from their intimate connexion with him, knew him best, saw so many redeeming qualities in his nature, that they uniformly considered any exclusion from his regard, not so much in the light of an injustice, as of a personal misfortune."

SIR SAMUEL ROMILLY.*

Samuel Romilly was born on the 1st of March, 1757, in Frith St. Soho, Westminster, and was the youngest of nine children. His father, Peter Romilly, was a jeweller. His family was of French extraction, and originally possessed considerable property in the neighbourhood of Montpellier, which they abandoned on the revocation of the edict of Nantes. Young Romilly is said to have been early distinguished by the extreme vivacity and sprightliness of his temper, which were, however, occasionally clouded with fits of nervous depression, a disposition which, in some degree, accompanied him throughout life. He was sent for some years to a small day school in his father's neighbourhood, and afterwards received some private instructions in classical learning. Being designed by his father for the profession of an attorney, he was placed under a gentleman in the Six Clerks' Office, but feeling an inclination towards the bar, an inclination in which he was encouraged by his friend Mr. Roget, (afterwards his brother-in-law) in May, 1778, he became a member of Gray's Inn, where he pursued his studies until the

* The substance of the following brief sketch is extracted from the Memoir of Sir Samuel Romilly, prefixed to the collection of his speeches, published by Ridgway in the year 1820.

year 1780. About this period his health suffered from the fatigues which he underwent in his military exercises as a member of the Gray's Inn Association, and being interdicted by his physicians from all severer studies, he employed himself in mastering the Italian language. He soon, however, returned to his professional pursuits, and the following letter, written about this time to his sister, Mrs. Roget, then resi ling in Switzerland, gives a pleasing picture of his occupations. The style of this letter somewhat resembles that of Sir William Jones's epistles, and is a *little* after the manner of Sir Charles Grandison.

"You ask me if the circle of my acquaintance is as small as ever?—Yes, to the full, less, I should rather say. All the few friends I had here two years ago, are now scattered in different parts of the earth. New acquaintance I have none. How indeed should I make them, since I am still as backward to introduce myself into company as ever? One acquaintance it is true I have made since you were in England; a friend I ought to say, if to take the greatest interest in my concerns, and to load me with unaffected civilities, can give a claim to that title. I mean Mr. Spranger, a name I believe perfectly new to you. He is a counsellor, under whom I have studied almost ever since you quitted England. Mrs. Spranger is one of the most amiable women I know, not

very young indeed, for she has four children, but still handsome, and possessing the most engaging manners. At their house, where I frequently dine or sup, though less often than I am pressed to do, I meet a good deal of company, which, consisting mostly of men of sense and education, is very agreeable. But the most engaging society, that, my dear sister, of your amiable sex, I seldom enjoy, for I am hardly ever of their card parties; besides it is not at a whist table that your sex appears in its native charms.

"With so small an acquaintance you will easily conceive that I seek for amusement in my studies, and there I am never disappointed in what I seek. My rooms are exceedingly lively, and capable in themselves to secure me from indulging in melancholy; so that you may discard those apprehensions which I persuade myself I discover under your obliging inquiries. In the depth of winter, the moment the sun peeps out I am in the country. A cold country indeed it is, for having only one row of houses between me and Highgate and Hampstead, a north wind, sharp as your piercing *bize*, blows full against my chambers. Fortunately I am sheltered from the north east. What renders my chambers very comfortable is a tolerable collection of books, which I confess, somewhat extravagantly, I have lately purchased."

In a letter to Mr. Roget, he says, "You ask

me how I spend my time?—In a manner so uniformly the same, that a journal of one day is a journal of all. About six, or sooner, I rise, go into the cold bath, walk to Islington to drink a chalybeate water, (from which I have found great benefit,) return and write or read till ten, then go to Mr. Spranger's, where I study till three, dine in Frith Street, and afterwards return to Mr. Spranger's, where I remain till nine. This is the history of every day with little other variations than that of my frequently attending the courts of justice in the morning instead of going to Mr. Spranger's, and of often passing my afternoons at one of the houses of parliament. Indeed, I am grown as great a politician as ****, though it is not mine as it was his favourite topic of conversation. 'Peace is my dear delight,' and peace and our politics are incompatible. My father is still as warm an advocate as ever for the ministry, and I as deeply affected as ever with the miseries and disgrace they have brought on the country."

In the year 1781, Mr. Romilly visited the continent, and spent some time in Switzerland and on the borders of Italy. During his stay at Paris, he became acquainted with several of the most distinguished men of letters, and amongst others, was introduced to Diderot and D'Alembert. On his return he resumed his practice of attending the House of Commons, and his letters

to his friends abroad at this period are said to exhibit the great interest which he took in the politics of that day. On the 7th of May, 1782, he was present when Mr. Pitt made his celebrated motion on the subject of reform, which appears, from his frequent allusion to the circumstance in his own speeches in parliament, to have made a deep impression upon his mind.

On the 2nd of June, 1783, Mr. Romilly was called to the bar; and the feelings which he experienced at this period, are described with great vivacity in his letters to his friend Mr. Roget. "The nearer I approach that, which I formerly so often wished for, the more I dread it. I sometimes lose all courage, and wonder what fond opinion of my talents could ever have induced me to venture on so bold an undertaking; but it too often happens (and I fear it has been my case,) that men mistake the desire for the ability of acting some very distinguished part."

In another letter of nearly the same date, addressed to the same friend, we find the writer expressing, with the modesty peculiar to a noble nature, those doubts of his own success which his friends never entertained, and that dignified submission to the probable chances of his fortune, which he was eventually not called upon to exercise. "I have taught myself," he says, "a very useful lesson of practical philosophy, which is,

not to suffer my happiness to depend upon my success. Should my wishes be gratified, I promise myself to employ all the talents, and all the authority I may acquire, for the public good,—*patriæ impendere vitam.* Should I fail in my pursuit, I console myself with thinking, that the humblest situation of life has its duties, which one must feel a satisfaction in discharging,—that at least my conscience will bear me the pleasing testimony of having intended well, and that, after all, true happiness is much less likely to be found in the high walks of ambition than in the *secretum iter et fallentis semita vitæ,*—were it not for these consolations, and did I consider my success at the bar as decisive of my future happiness, my apprehensions would be such, that I might truly say, *Cum illius diei mihi venit in mentem, quo mihi dicendum sit, non solum commoveor animo, sed etiam toto corpore perhorresco.*"

It was a characteristic feature of Sir Samuel Romilly's life, that he retained throughout his elevated and useful career, that ardent and generous love of virtue and honour which distinguished him in his early youth. How carefully he guarded these principles, and how sensibly he felt their value, we learn from a letter addressed by him to Mr. Roget soon after he was called to the bar. "I am soon to enter upon a career, which possibly (though, I grant, not very probably,) may

place me in important and critical situations, which will certainly give me partial and selfish interests, incompatible with the good of others,—which will throw me amidst mankind, and condemn me to hear the dishonourable sentiments of which they make profession without opposing them, and to be a near spectator of their selfish and degrading conduct, without discovering any detestation at it. It will, in part, depend upon you to save me from the contagion of such examples. Not but that my heart recoils from them with an antipathy which seems quite insurmountable; but I have I know not what kind of terror, which I cannot overcome, of the force of habit,—of perpetual temptations,—of being familiarized with a contempt of virtue. The best shield against them, and the best security to maintain the purity of one's virtue, is, I am convinced, the society and conversation of such a friend as yourself, whom I may consider as the pledge and deposit of all the sacred engagements which one has taken with God, with oneself, and with one's fellow-creatures."

For some years after his entrance into the profession, Mr. Romilly's fears with regard to his success appeared to be justified. Notwithstanding his unwearied diligence and his sound legal acquirements, he is said to have attended the Warwick Session, the Midland Circuit, and the Court of Chancery

four or five years, without making the progress which he might reasonably have expected. The nervous diffidence which he displayed in court at this early period of his professional life, probably prevented the full developement of his powers. The time, however, which he spent in court was not thrown away. He gradually acquired those habits of self-possession by which he was subsequently so much distinguished, and he likewise gained that accurate knowledge of the practical part of our Law, both Civil and Criminal, which, at a late period of his life, contributed greatly to the success of his efforts in favour of an amendment of the system of our Jurisprudence. The state of the criminal Law in England had engaged his attention at a very early period, and, in the year 1786, he published some Observations* upon Mr. Madan's truculent pamphlet, "Thoughts upon Executive Justice," (*see ante, p.* 169.) in which he fully exposed the cruelty and absurdity of that Reverend Gentleman's views.

About the year 1791, Mr. Romilly had attained considerable practice as a junior; and, in 1797, had acquired reputation even as a leader. In the following year he married Miss Garbett, a Here-

* Mr. Basil Montagu has republished a great part of this Tract in the first volume of his "Opinions of various Writers on the Punishment of Death."

fordshire lady, whom he had met at the house of the Marquis of Lansdowne, a nobleman who took a lively interest in Mr. Romilly's success. His practice now became very lucrative, and was increased by the elevation of Sir John Scott, then Attorney General, to the Chief Justiceship of the Common Pleas. In the year 1800, he received a silk gown, and from this period he took a decided lead in the Court of Chancery.

On the accession of Mr. Fox and his friends to power, in the year 1806, Mr. Romilly was appointed Solicitor General, and received the usual honour of knighthood, and he was on the same occasion returned to Parliament as Member for Queenborough. His first duty on the commencement of his parliamentary career, was in the conduct of Lord Melville's trial, of which he was appointed one of the managers, and his speech in summing up the evidence, has been said to challenge comparison with Lord Mansfield's masterly effort on the trial of Lord Lovat. In the short period during which he held office, he never forgot his youthful promise, "*patriæ impendere vitam*," and he zealously exerted all his credit and authority in effectuating those enlarged views of legislative improvements which he had been so long maturing.

He introduced into parliament two bills, one for the Amendment of the Bankrupt Laws

G. III. c. 135,) which was carried; the other, to make the Freehold Estates of all debtors assets for the payment of their debts, a proposal which was subsequently carried into effect, (47 G. III. c. 74,) in the case of persons engaged in trade. He had also the satisfaction of lending his assistance towards the completion of that great work of humanity, the Abolition of the Slave Trade; and he exerted himself with effect on the important question of the Mutiny Bill. Early in 1807, the administration, of which he formed a part, was dissolved, and he retired from his official duties. His conduct during his Solicitorship, was wise, discreet, and liberal. The sentiments which he expressed on the discussion o the Mutiny Bill particularly, were such, as to draw from an Honourable Member the observation, that "he had never before heard such constitutional sentiments from any Law Officer of the Crown, and that he was bound, both for his constituents and himself, to offer his sincerest gratitude and acknowledgments to the honourable and learned gentleman who had expressed them."

In the year 1808, Sir Samuel Romilly, having been returned in the new parliament of 1807, brought forward his first motion for amending the Criminal Law. It is impossible, within the narrow limits of the present imperfect sketch, to give a detailed account of his efforts in the melioration

of our Penal Code, and of the Law in general; we must content ourselves, therefore, with giving a brief catalogue of the alterations introduced by him into our Statute Book. In 1809, he brought forward another Bill for the amendment of the Bankrupt Law, (49 G. III. c. 121.) In the following year, he moved for leave to bring in three Bills to repeal the Acts of 10 and 11 W. III. 12 Anne, and 24 G. II. which make the crimes of stealing privately in a shop goods to the value of five shillings, or in a dwelling-house, or on board a vessel in a navigable river, property of the value of forty shillings, capital felonies. The substance of the arguments employed by him on those occasions, will be found in his Tract, entitled "Observations on the Criminal Law of England." Notwithstanding the exertions made by Sir Samuel Romilly, and by the friends of a more just and humane policy, these bills were not suffered to pass into a law. In the following session they were again brought forward; but were rejected in the House of Lords, on the motion of Lord Ellenborough. However, in the year 1811, Sir Samuel succeeded in procuring the repeal of the Statutes 18 G. II. c. 27, and 3 G. III. c. 34, which inflicted the punishment of death for stealing in bleaching-grounds, and likewise the ridiculously bloody enactment of Elizabeth, which made it a capital offence in soldiers and marines

to be found wandering about the realm without a pass.

The Parliament having been dissolved in 1812, Sir Samuel Romilly offered himself as a candidate for Bristol, on the invitation of a numerous body of the electors. He was unsuccessful in the contest; but the good-temper and honourable feeling, which distinguished his conduct on this occasion, were more creditable to him than any triumph could have been. He was subsequently returned to the new Parliament for Arundel. During this Parliament the Bill for the Appointment of a Vice Chancellor was brought forward, which was strongly opposed by Sir Samuel Romilly. In the course of the same session he introduced two Bills for altering the Punishment of High Treason, and for taking away the Corruption of Blood in cases of Treason and Felony. Both the Bills were rejected at the time; but the latter of them was subsequently allowed to pass, with some material modifications. In the discussions which took place in this Parliament on the Suspension of the Habeas Corpus Act, Sir Samuel Romilly acted a distinguished part; and shortly before the dissolution, he made a solemn appeal to the House, upbraiding them for the unconstitutional measures which they had pursued, in twice repealing that Act, and in afterwards indemnifying ministers for those violations of the Law, which were

not even protected by the suspension. "Who our successors may be," said he, "I know not; but God grant, that this country may never see another Parliament so regardless of the liberties and rights of the people, and of the principles of general justice as this Parliament has been."

The highly honourable manner in which Sir Samuel Romilly was returned for Westminster, in the year 1818, must be remembered by every one; but the year which witnessed this signal attestation to his merits, was destined also to behold the termination of his most enviable and happy career. The health of Lady Romilly had begun to decline, and this circumstance, in addition to the too arduous duties of his professional and public life, visibly affected the health and spirits of Sir Samuel. The heavy anxieties under which he suffered pressed so painfully upon his mind, that he appears to have apprehended that last of human misfortunes—a state of mental derangement. The fluctuations of hope and fear, in which he was kept by the varying health of Lady Romilly, prevented his mind from enjoying any repose. For a long period he is said to have been either a stranger to sleep, or to have had his rest disturbed by the most frightful dreams; but amid all his sufferings he still preserved an outward serenity, and, for the sake of his family and his friends, seemed to struggle with the sorrows which

were overwhelming him. On the arrival of his sister, whom he tenderly loved, he met her without the appearance of a tear, or of any visible emotion. On the 28th Oct. 1818, Lady Romilly died, and when informed of the event, he listened to it with that unnatural composure which shewed that the strong current of his affections had been diverted from its channel.

On that day he was removed by his friends from the Isle of Wight, where Lady Romilly had resided during her last illness, and arrived in London by easy stages on the 1st of November. During this journey his feelings were violently agitated. The account of his last hours is thus given by Mr. Peter: "On his arrival at his residence in Russell Square, he made repeated but ineffectual attempts to compose his mind, and, throwing himself upon a sofa, joined his hands together for some moments as if in a state of prayer. He was now apparently calm, but his tranquillity was more frightful than even his former violence. He had the aspect of a man dying from some internal wound. Dr. Roget, who had attended his uncle from the commencement of his illness, and watched over his couch with all the pious care and devotion of a son, was, soon after their arrival in London, joined by Dr. Marcet, and on the following morning by Dr. Babington. But their efforts were vain. Long suffering had sus-

pended the faculties of their unhappy patient. His mind became deranged—his heart was broken—and in the violence of frenzy he terminated his own existence." He was interred in the same grave with Lady Romilly, at Knill in Herefordshire.

It is unnecessary to attempt a character of Sir Samuel Romilly, as we are enabled to present to the reader a much more able one than any which it is in our power to sketch. (*See post, p.* 249.) We may, however, be permitted to remark, that perhaps his most valuable quality was a purity of ambition, or rather an absence of that morbid love of distinction which is nourished even by infamous splendour. It is in this view more particularly that his character is worthy of the deep attention and studious imitation of all the members of that profession of which he formed the most distinguished ornament. His talents and his attainments it may be difficult to emulate, but his honourable feelings and his integrity of principle, we may, if we have the resolution to do so, make our own.

HORSE PLEAS.

The learned author of the Pleader's Guide imagines that sham pleas obtained the above title from their being intended to *jockey* the plaintiff, but this derivation is incorrect. They are termed Horse Pleas from their being in fact pleas of a

horse delivered in satisfaction of the debt. The late Mr. Baron Wood when practising under the Bar, having drawn a plea of this kind, was entreated by the party to prepare another exactly similar to the first, as that had answered extremely well. "How so?" said Mr. Wood. "Oh," said the gentleman, "I took care to prove it."

Some singular sham pleas are upon record. In one instance to an action of assumpsit for board and lodging, the facetious pleader pleaded the delivery of two Bengal tigers in satisfaction.

BLACKSTONE AND THE BOOKSELLER.

Sir William Blackstone is said to have possessed an irritability of temper which in the latter part of his life was increased by a nervous affection. The writer of that disjointed book, the Memoirs of Sir W. Blackstone, in referring to this infirmity relates the following anecdote. "I was perfectly well acquainted with a certain bookseller, now deceased, who told me that on hearing that Mr. Blackstone had commenced Doctor of Civil Law, the next time he did him the honour of a visit, the former in the course of conversation, and out of pure respect, called the new-made Civilian "Doctor." This familiar mode of accosting him (as he was pleased to term it) put the doctor in such a passion, and had such an instantaneous and violent effect, and operated upon him

to so alarming a degree, that the poor bookseller really thought he should have been obliged to have sent for another doctor, and from Saint Luke's too." (*Character of Sir William Blackstone, p.* 90.)

DR. PARR'S CHARACTER OF LORD THURLOW.

"Minas possumus contemnere vocemque fulmineam Thrasonici istius Oratoris τε τὰς ὀφρῦς κυανέας ἰκμαίνος, cujus vulticulum, uti Noviorum istius minoris, ferre posse se negat Quadruplatorum genus omne et Subscriptorum. Quid enim? truculentus semper incedit, teterque, et terribilis aspectu. De supercilio autem isto quid dicendum est? annon reipublicæ illud quasi pignus quoddam videtur? annon senatus illo, tanquam Atlante cœlum, innititur?

"Ferunt profectò Novium in 'summa feritate esse versutissimum, promtumque ingenio ultra Barbarum.' Quod si demseris illi aut σφοδρότητα quanta in Bruto fuit, aut πικρότητα verè Menippeam, aut προσώπου σκυθρότητα propriam et suam, facilè eidem juris nodos legumque ænigmata ad solvendum permiseris.

"Fervido quodam et petulanti genere dicendi utitur, eodemque, nec valdè nitenti, nec planè horrido. Solutos irridentium cachinnos ita commovet, ut lepores ejus, scurriles et prorsús veteratorios diceres. Omnia loquitur verborum sanè bonorum cursu quodam incitato, itémque voce,

qua nè subsellia quidem ipsa desiderant pleniorem et grandiorem. In adversariis autem lacerandis ita causidicorum figuras jaculatur, ita callida et malitiosa juris interpretatione utitur, ita furere et bacchari solet, ut sæpè mirere tam alias res agere optimates, ut sit penè insano inter disertos locus.

"Fuit ei, perinde atque aliis, fortuna pro virtutibus. Didicit autem à Muciano, satis clarum esse apud timentem, quisquis timeatur. Corpore ipse ingens, animi immodicus, verbis magnificus, et specie inanium magis quàm sapientia validus, studia ad se Optimatium illexit, eamque adeptus est auctoritatem, quæ homini novo pro facundia esse posset. Scilicet, quæ bonis Titio, Seioque turpissima forent, Novium nostrum maximè decent, siquidem è subsellis elapsus de Tribunali nunci pronuntiet, et ex Præcone aionum factus sit institor eloquentiæ senatoriæ. Quam igitur in civitate gratiam dicendi facultate Q. Varius consecutus est, vastus homo atque fœdus, eandem Novius intelligit, illa ipsa facultate, quamcunque habet, se esse in Senatu consecutum——

——"Ellum, *confidens, catus :*
Cùm faciem videas, videtur esse quantivis pretî :
Tristis severitas inest in voltu, atque in verbis fides."

(*Preface to Bellendenus.*)

LORD CHIEF JUSTICE KELYNG AND LORD HOLLES.

Kelyng was appointed Chief Justice in 1665. The reports which pass under his name are said to have been published by L. C. J. Holt, (*Fost. Crown Law*, 204.) The following is the account of a quarrel between him and Lord Holles.

"Lord Chief Justice Kelyng was obliged to make Denzel, Lord Holles, satisfaction for the affront put upon his lordship by him at the trial of certain French gentlemen, (for a robbery,) in the Court of King's Bench, in Easter Term, 1670, 22 Charles 2. The affront was, that when Lord Holles attempted to speak to the characters of the Frenchmen, the Chief Justice stopped him, saying he must not interrupt the court; and Lord Holles replying that it was neither to interrupt the court, nor to do them any wrong, to inform them as much as possible of all passages, &c. the Chief answered again very angrily, "My Lord, you wrong not the court, but you wrong yourself, and it is not the first time you have been observed to appear too much for strangers." "So" says Lord Holles, "I was snubbed and sat down again; but I must say it was language I had not been used to, nor, I think, any of my condition, that had the honour to serve the King, in the quality I do, of a Privy Counsellor." The Lord Chief Justice also, upon Walrond's evidence, declared (looking

fully at Lord Holles, whence the whole court understood it to be meant of him) that there had been some foul doings. Upon these injuries, he petitioned the House of Lords, who on Friday, March 10th, 1670, made the following order. "This day the Lord Holles produced several witnesses to be examined concerning his complaint, on his petition of several indignities put upon him by the Lord Chief Justice of the King's Bench, at the trial of some French gentlemen in the said Court of King's Bench, who were falsely accused of a robbery by four butchers, in Easter Term last. After the hearing of which witnesses, the Lord Chief Justice made his defence, and denied that he intended any thing against the Lord Holles, when he spoke those words at the said trial, that it was a foul contrivance, &c. as in the petition is set forth; to which defence the Lord Holles made a short reply, and then voluntarily withdrew himself, and the Lord Chief Justice withdrew himself also. Upon which the house took the whole matter into serious consideration, and ordered, that the Lord Chief Justice should be called to his place as a judge; and openly, (in the presence of the Lord Holles,) the Lord Keeper should let him know, that this house is not satisfied with his carriage toward the Lord Holles in this business, and therefore has ordered, that he should make this acknowledgement, which is to be read by the clerk

as followeth, That he did not mean it of the Lord Holles when he spoke these words, (that it was foul contrivance,) and that he is sorry, that by his behaviour or expressions, he gave any occasion to interpret it otherwise, and asks the pardon of this house and the Lord Holles. Then the Lord Chief Justice of the Court of King's Bench was called to his place, and (the Lord Holles being also present,) the Lord Keeper performed the directions of the House, and the Lord Chief Justice read the acknowledgement aforesaid, only changing the style into the first person." (*Preface to the Life of Lord Holt, p.* vi.)

CHARACTER OF SIR SAMUEL ROMILLY.

"In reviewing the character of this great and good man, it is obvious, that the characteristic of his understanding was that rarest of all qualities, plain practical good sense. It is much more true than is generally imagined, that the highest exertions of the intellect depend, in a considerable degree, on the qualities of the heart. Without honesty of intention a man may be ingenious and subtle; but the indirectness of his views will warp and weaken the operations of his mind, and whilst he is anxious to disguise some part of his thoughts, the current of the rest is impeded, the will becomes embarrassed, and that vigorous power of the mind, which realizes its embryo

schemes and converts thought into action, vacillates, and is reduced to uncertain sallies and discontinued efforts. It may, perhaps, be considered a happy provision of nature, that in most cases where malignity of purpose actuates the understanding, it corrodes it at the same time by the spirit of cunning, and dwarfs and cripples the mighty instrument, by this mean auxiliary. In Sir Samuel Romilly there was no obliquity of understanding. The objects which he wished to attain, he was never ashamed to avow. He viewed them openly, and only considered the most direct means of obtaining them. If his objects were really the most desirable, and the means which he employed the most effectual and adequate, he was, as far as human nature will allow, a truly wise man.

"To those who are acquainted with the comprehensive views which he took into every subject on which he inquired, it would be deemed a matter of equal (if not greater,) praise, that Sir Samuel Romilly attempted no more than he did attempt, as that he effected what he did. For one who has studied the nature of man and of society philosophically, and considered the purposes of government, it requires no ordinary discretion, when proceeding to action, to take into consideration the various circumstances in which society in this country at present exists, to perceive the utility of ancient institutions, though

perverted in some of their bearings, or incumbered by the superstructure of time and corruption. It is the high praise of the subject of this Memoir, that it was his object rather to engraft than to root up, and to respect not only the reason of things, but existing passions and prejudices. *Retinuit, quod est rarissimum in sapientia, modum.* Though his mind was imbued with philosophy of the noblest kind, he retained in a singular degree his native discretion.

"His sense of religion did not consist in the supposition of the importance of particular dogmas of faith, but in a deep feeling of sense and gratitude to a superintending Providence, and in an intimate conviction of his heart and of his understanding, that he best exemplified his faith and his gratitude, by following implicitly the sense of duty, which was strongly impressed on his enlightened conscience, and by acts of beneficence to his fellow-creature. Practical piety was in his mind strongly connected, and almost identified with practical benevolence; and any professions of religion which terminate in barren speculation, or in mere personal raptures, he considered as strongly stamped with marks of spuriousness, as any system of mere abstract and unsocial humanity. Religion, in his view, was the strong guardian and incentive to morality; it was something that ennobles the understanding, and

enlarges the heart, and communicates purity and activity, and intensity, to the social virtues.

"That he was able to accomplish so much, both in his profession and in his public character, can be attributed only to the habit of sedulous and unremitting industry, which he formed early in life, and in which he persevered as long as nature allowed: he was extremely temperate, though no one enjoyed more than he did the freedom of unrestrained conversation, and those charms of elegant society, in which he occasionally indulged; yet he never made any sacrifice of duty, whether professional or parliamentary, to these delightful recreations. In his manners in public, there was great self-possession and dignity, mixed, perhaps, with some appearance of reserve; but in intimate society, there never existed a man, the blandness of whose manners were more engaging, or the effusions of whose mind in careless moments, were more delightful for their gaiety, or more captivating from their unstudied elegance. In his wit there was something of that tacit contrast and covert allusion, of which the archness is not, till the close, in any degree anticipated. It was often ironical; but those who recollect him, either at the bar or in parliament, will remember, that his irony was sometimes closed with more direct attacks on imposture or vice; and that his pointed sarcasms, when he did

indulge in them, were such as to evince that he did not refrain from employing them more frequently from any want of power, but because other methods suited better the courtesy and urbanity of his nature.

"His attainments in general literature were considerable, and the knowledge which he incidentally showed of the history and antiquities of the country, in the discussion of constitutional questions, bespoke a mind richly and deeply stored, but entirely unostentatious of its treasures. In short, every feature of his mind bore the same impress of sincerity and simplicity; and his life exemplified, in an eminent degree, the honest motto of that noble constitutional lawyer and statesman, Lord Somers: *Esse quam videri.*

"A man who, born the youngest son of a tradesman, in an obscure part of Westminster, by his merits alone attained the eminence of representing that wealthy and populous city in parliament; a lawyer who, in a corrupt age, preserved his integrity unsullied, and relinquished the emoluments and rank of a splendid office which he actually enjoyed, as well as the prospect of preferment, still more lucrative and dignified, rather than make any compromise of his political principles; a statesman who, when in office under the Crown, respected and asserted the cause of the people, and exerted the influence of his station to enact statutes of humanity and beneficence,

and who, even when out of office, succeeded in some degree, in mitigating the severity of the penal code, and was unwearied in urging further improvement; such a man, beloved as he was by his friends, admired by his coadjutors, and respected by his adversaries, deserves to be held in everlasting remembrance. When the courtly sycophants, and factious demagogues, and cunning chicaners of the age, shall have been alike forgotten, and all their intrigues and cabals, and cobweb sophistries swept into oblivion with the paltry occasions that excited them, the memory of Romilly will be reverenced as a man whose spirit breathed in a pure air, and formed to itself higher and nobler aims; and future ages will cherish and bless the name of the upright advocate, the genuine patriot, the friend and the protector of his fellow creatures." (*The Inquirer*, vol. ii. *p*. 318.)

LENGTH OF LEGAL INSTRUMENTS.

"The length of legal instruments is often owing to the necessity of providing for a multiplicity of contingent events, each of which *may* happen, and must, therefore, be both fully described, and fully provided for. Of the nature and extent of this multiplicity, the party himself is seldom aware; sometimes even his professional adviser does not feel it, until he begins to frame the necessary clauses. A gentleman, upon whose will the Reminiscent was

consulted, had six estates of unequal value, and wished to settle one on each of his sons, and his male issue, with successive limitations over to the other sons, and their respective male issue, in the ordinary mode of strict settlement; and with a provision, that in the event of the death and failure of issue male of any of the sons, the estate devised to him, should shift from him and his issue male, to the next taker and his issue male, and failing there, to the persons claiming under the other limitations. It was considered at first, that this might be effected by one proviso: then by two, and then by six; but upon a full investigation, it was found that it required as many provisoes as there can be combinations of the number 6;—now—

$$1 \times 2 \times 3 \times 4 \times 5 \times 6 = 720;$$

Consequently, to give complete effect to the intention of the testator, 720 provisoes were necessary.

By a similar calculation, if a deed, which the Reminiscent was instructed to prepare, had been executed, the expense of the necessary stamp would have amounted to ninety millions, seven hundred and twenty-two thousand pounds. Ten persons, each of whom was possessed of landed property, having engaged in a mining adventure, a deed of partnership was to be prepared, which was to contain a stipulation that, if any one or more

of the intended partners, should advance money to any other, or others of them, the money lent should be a charge, in the nature of a mortgage, upon the share or respective shares of the borrower, or respective borrowers, and overreach all subsequent charges,—and, therefore, the charges were to be considered as mortgages actually made by the deed. Thus in the contemplation of equity, the estate was actually to be subjected by the deed, to as many possible mortgages as there can be combinations of the number 10. Each of these possible mortgages being for an indefinite sum, would require the £25 stamp.

$25 \times 2 \times 3 \times 4 \times 5 \times 6 \times 7 \times 8 \times 9 \times 10 =$ 90,720,000. (*Butler's Reminiscences*, p. 63.)

HOW JOHN BULL LOOKED OVER HIS ATTORNEY'S BILL.

"When John first brought out the bills, the surprise of all the family was inexpressible at the prodigious dimensions of them; they would have measured with the best bale of cloth in John's shop. Fees to judges, puisne judges, clerks, prothonotaries, filacers, chirographers, under clerks, proclamators, counsel, witnesses, jurymen, marshalls, tipstaffs, criers, porters; for enrolling, exemplifications, bails, vouchers, returns, caveats, examination, filing of writs, entries, declarations, replications, recordats, noli prosequis, certioraris, mittimus's,

demurrers, special verdicts, informations, scire facias, supersedeas, habeas corpus, coach-hire, treating of witnesses, &c. "Verily," says John, "there are a prodigious number of learned words in this law; what a pretty science it is!" (*History of John Bull*, ch. xi.)

LORD MANSFIELD AND MR. DUNNING.

Mr. Dunning having resigned his office of solicitor general, appeared on Wednesday, 2nd May, 1770, being the first day of Easter Term, 10 Geo. 3, on the outside of the bar in the common ordinary bar gown. Lord Mansfield, after Mr. Dunning had made his first motion, addressed himself to him, and declared, that in consideration of the office he had held, and his high rank in business, he intended for the future, (and thought he should not thereby injure any gentleman at the bar) to call on him next after the King's Counsel, Sergeants, and the Recorder of London.

Mr. Caldecot and Mr. Coxe, the two senior utter Barristers present, very readily assented to it, and said that they had thoughts of proposing the same thing themselves. (5 *Burr.* 2568.)

LORD CHIEF JUSTICE HOLT.

In the character of Lord Chief Justice Holt, given in the Tatler, (No. 14) we find some severe reflections on the Justices of the Peace of that day.

"It would become all men, as well as me, to lay before them the noble character of Verus the magistrate, who always sat in triumph over, and in contempt of vice. He never searched after it, or spared it when it came before him: at the same time he could see the hypocrisy and disguise of those who have no pretence to virtue themselves but by their severity to the vicious. The same Verus was in times long past, Chief Justice (as we call it amongst us) in *Felicia*. He was a man of profound knowledge of the laws of his country, and as just an observer of them in his own person. He considered justice as a cardinal virtue, not as a trade for maintenance. Wherever he was judge, he never forgot that he was also counsel. The criminal before him was always sure he stood before his country, and in a sort, a parent of it; the prisoner knew, that though his spirit was broken with guilt, and incapable of language to defend himself, all would be gathered from him which could conduce to his safety, and that his judge would wrest no law to destroy him, nor conceal any that could save him. In his time there was a nest of pretenders to justice, who happened to be employed, to put things in a method for being examined before him at his usual sessions: these animals were to Verus; as monkeys are to men, so like that you can hardly discern them; but so base that you are ashamed of their fraternity. It

grew a phrase, "Who would do justice on Justices?" That certainly would Verus. I have seen an old trial where he sat Judge on two of them; one was called Tricktrack, the other Tearshift, one was a learned Judge of Sharpers, the other the quickest of all men at finding out a wench. Trick-track never spared a pickpocket, but was a companion to cheats; Tearshift would make compliments to wenches of quality, but certainly commit poor ones. If a poor rogue wanted a lodging, Trick-track sent him to gaol for a thief: if a poor whore went only with one thin petticoat, Tearshift would imprison her for being loose in her dress. These patriots infested the days of Verus, while they alternately committed and released each other's prisoners. But Verus regarded them as criminals, and always looked upon men as they stood in the eye of justice, without respecting whether they sat on the bench, or stood at the bar."

LEGAL RECOLLECTIONS OF LONDON.—NO. III.

(*Concluded from vol.* ii. *p.* 272.)

Having traversed Chancery Lane and its vicinage, let us proceed down the Strand, towards Westminster. On the right-hand side, as we walk through Pickett-Street, we arrive at Clement's Inn, one of the Minor Inns, or Inns of Chancery, as they were formerly called. To these Societies

in former days the Student was consigned before he was thought worthy to make his appearance at the Inns of Court; and here, by diligent study and strict attention to the moots and exercises of the Society, he qualified himself for the more serious discipline of the Temples or Lincoln's Inn. Occasionally the youthful inmates of these Societies forgot the gravity of their calling, and exhibited symptoms of great unruliness, as we learn from Strype:—"Here, about this church (St. Clement's) and in parts adjacent, were frequent disturbances, by reason of the unthrifts of the Inns of Chancery, who were so unruly on nights, walking about to the disturbance and danger of such as passed along the streets, that the inhabitants were fain to keep watches. In the year 1582, the Recorder himself, with six more of the honest inhabitants, stood by St. Clement's Church to see the lanthorn hung out and to observe if he could meet with any of these outrageous dealers. About seven at night they saw young Mr. Robert Cecil, the Lord Treasurer's son, who was afterwards Secretary of State to the Queen, pass by the church, and as he passed gave them a civil salute; at which they said, Lo! you see how a nobleman's son can use himself, and how he putteth off his cap to poor men: our Lord bless him!" This passage the Recorder wrote in a

letter to his father, adding, "Your Lordship hath cause to thank God for so virtuous a child."

It was at Clement's Inn, also, that Justice Shallow spent his "mad days."

"*Shal.* By yea and nay I dare say my cousin William is become a good scholar. He is at Oxford still, is he not?

"*Sil.* Indeed Sir, to my cost.

"*Shal.* He must then to the Inns of Court shortly. I was once of Clement's Inn; where I think they will talk of mad Shallow yet.

"*Sil.* You were called lusty Shallow then, cousin.

"*Shal.* I was called anything, and I would have done anything, indeed, and roundly too. There was I and little John Doit of Staffordshire, and black George Bare, and Francis Pickbone, and Will Squele, a Cotswold man—you had not four such Swinge Bucklers in all the Inns of Court again. I may say to you we knew where the bona-robas were, and had the best of them at commandment. Then was Jack Falstaff, now Sir John, a boy, and page to Thomas Mowbray, Duke of Norfolk.

"*Sil.* This Sir John, cousin, that comes hither anon, about soldiers?

"*Shal.* The same Sir John, the very same. I saw him break Shogan's head at the Court gate when he was a crack not thus high: and the very same

day I did fight with one Sampson Stockfish, fruiterer, behind Gray's Inn. O, the mad days that I have spent! and to see how many of mine old acquaintance are dead."

The pertinent observations of Falstaff upon the Justice's history of his early adventures, must not be omitted.

"Lord, Lord, how subject we old men are to this vice of lying! This same starved Justice hath done nothing but prate of the wildness of his youth and the feats he hath done about Turnbull Street, and every third word a lie duer paid to the hearer than the Turk's tribute. I do remember him at Clement's Inn like a man made after supper of a cheese paring; when he was naked he was for all the world like a forked radish with a head fantastically carved upon it with a knife." (*Second Part of Henry IV. Act* iii. *S.* 2.)

We now descend into the Strand, which has witnessed many a stately legal solemnity. Through the Strand the new Chancellor was wont to ride in solemn procession, with all the Judges of England on horseback in his train. Lord Chancellor Shaftesbury was the last who insisted upon the ceremony being performed according to the ancient fashion, and the consequence was, as we have already related, the unhappy fall of the singularly well-learned Mr. Justice Twisden, who doubtless arose as he is sometimes represented by Saunders—*valde iratus.*

The Strand is quite a legal thoroughfare, whence the old ballad on the destruction of the cross at Charing-Cross during the civil war.—

UNDONE, undone, are the Lawyers all
  Who wander about the town;
Nor can find the way to Westminster
  Now Charing Cross is down.
At the end of the Strand they make a stand,
  Swearing they're at a loss;
And chafing say, This is not the way,
  We must go by Charing Cross.

In the course of the Strand there are several sites interesting to the legal antiquary. Arundel Street, where Arundel House formerly stood, whither Selden used to resort to study the marbles then recently imported—Somerset House, renowned in the Popish plot—Exeter Change, where Don Pantaleon Saa, brother of the Portuguese Ambassador, assassinated an English gentleman, &c. &c.

Proceeding towards Westminster, we pass, on the borders of St. James's Park, the House of the infamous Jefferies. It was built for him when Lord Chancellor, and may be known by the flight of steps which his Royal master permitted to be made into the Park for the accommodation of his Lordship; they terminate above in a small court, on three sides of which stands the house. On the left is a building which has been used as a chapel.

In the time of Jefferies it was the Hall in which he heard causes when it was inconvenient for him to go to Westminster Hall or to Lincoln's Inn. (*See Pennant's London, p.* 153.)

We now arrive at "Westminster Hall," the head-quarters of "Law and Lawyers!" As we enter the venerable fabric what a host of legal associations press upon our minds! We almost expect as we traverse its spacious area to see "the creatures of Westminster Hall," John Doe and Richard Roe, incarnate and palpable, gazing upon us as we pass. As we approach the upper end of the Hall, that sacred *officina Justitiæ* where law and equity have been for so many centuries administered, all the blood of the Styles's rushes to our hearts as we gaze upon the places where Hale and Holt and Mansfield, where Clarendon and Somers and Hardwicke, presided. This splendid Hall has been dedicated for centuries to all magnificent purposes. From the earliest period it has been the throne of our national Justice. It has been the seat of our ancient Parliaments. It is the scene of those solemn impeachments which are instituted by the Commons of England; and lastly, it has been the witness of a King's Trial and condemnation.

SIR WILLIAM JONES, (THE ATTORNEY GENERAL.)

Sir William Jones appears to have been one

of the most honest lawyers of the reign of Charles II. a period when integrity was, indeed, a rare quality in the profession. Burnet, with whom he was acquainted, has left the following character of him :—" He was raised to that high post merely by merit, and by his being thought the greatest man of the law: for as he was no flatterer, but a man of a morose temper, so he was against all the measures that they took at court. They grew weary of him, and were raising Sir John King to vie with him; but he died in his rise, which, indeed, went on very quick. Jones was an honest and wise man: he had a roughness in his deportment that was very disagreeable; but he was a good-natured man at bottom, and a faithful friend. He grew weary of his employment, and laid it down; and though the Great Seal was offered him, he would not accept of it, nor return to his business. The quickness of his thoughts carried his views far, and the sourness of his temper made him too apt both to suspect and to despise most of those who came to him."

When the Bill for excluding the Duke of York from the Throne was proposed, Sir William Jones, who had an unconquerable aversion to Papists, supported it with great zeal. " Sir William Jones," says Swift, in his Appendix to the Third Part of Temple's Memoirs, " was reported one of the best speakers in the House, and was very

zealous in his endeavours for promoting the Bill of Exclusion. He was a person of great piety and virtue, and having taken an affection to Sir William Temple, was sorry to see him employed in the delivery of so unacceptable a message [that of January 4, 1681, against the Exclusion Bill,] to the House: the substance of what he said to the author upon it was this, that, for himself, he was old and infirm, and expected to die soon; 'but you,' said he, 'will, in all probability, live to see the whole kingdom lament the consequence of this message you have now brought us from the King.' "

It has been supposed, that Dryden alludes to Sir William Jones and the Exclusion Bill in Absolom and Achitophel.

" —— Bull-faced Jonas, who could statutes draw,
To mean rebellion, and make treason law."

But, according to some persons, Winnington is meant to be described in these lines.

A number of anecdotes respecting Sir William Jones may be found in the " Examen" of Roger North, who also mentions him in the Life of his brother, the Lord Keeper. The following character of Jones is taken from the Examen.

" I am persuaded," says he, " that being in place he was very weary of the Plot prosecution, as he was afterwards of being among the heads

of a faction against the court in which he served the former was obnoxious to uneasy reflections, that, if out of ardour he exceeded, innocent blood might be in the rear of him, and the other touched his reputation, as not consistent with the decorum of a servant, who, though never so ill-used, should not publicly fly in his quondam master's face: all which matters must needs be weighed by one of his penetration and judgment, and who was no ill man at the bottom, though unhappily mistaken in his conduct. And, I verily believe, that all along he aimed at a certain post in the law, then filled by the Lord Chief Justice North, and directed all his steps towards it, proposing to himself, in acquiring that, to compass his final and retired settlement; but he was disappointed, and that increased the uneasiness of his mind, according as the proffers he had made towards it were violent and irregular: all which mystery I hope to resolve clearly before I have done. After the Oxford Parliament, he did not appear much abroad. He hated Shaftesbury, and, notwithstanding party-work, would not willingly come into the room where he was. His personal gravity and virtue was great, and he could not bear such a flirting wit and libertine as the other was. He had a great value for Mr. Hampden, and used to magnify his father as the greatest man for sense and foresight that was concerned against King Charle-

I. and not without reason, for he knew all that litigating in Parliament would, (as was intended,) end in open rebellion, therefore he was in with the first, and took a regiment, but was killed betimes, else he might have had the post of Cromwell upon more generous terms. Sir William Jones was at a meeting at Mr. Hampden's house in Buckinghamshire, where several of the most confiding men of the faction assembled, to consult of the common affair, whether before or after the Rye discovery, I cannot tell; but either way, it must sit hard upon Sir William Jones's spirits, who, being a lawyer, and, as I said, in the general no bad man, was for doing his work the formal way, and hated violence. So, knowing the horrid consequence and hazards of that plot, which could be no secret to him, the thoughts of it were a burthen to his mind, and, it is said, an unaired bed gave him a great cold, under which infliction, having lead at his heart, nature wanted force to master the distemper; so it turned to a malignant fever and carried him off.

"He was a person of a very clear understandstanding, and, if possible, a clearer expression, wherein he was assisted with an extraordinary opinion he had of both, as also of his own general worth, for that was his foible. He was extremely proud and impatient of competition, and much more of being left behind, as it was his chance to

be in the course of his preferment, whereby he missed of his desired post. And that partly occasioned a sort of restlessness, which made him commit several gross errors in the main chances of his life. His felicity was never to be disturbed in speaking, nor by any audience or emergence, put by the forecast and connexion of his thoughts; but dilated with a constancy, steadiness, and deliberation, admirable in his way; so that in speaking as counsel, one might mistake him for the judge. He affected somewhat of the rustic phrase of his own country, which was Gloucestershire; as to instance in a word, althoff, instead of although, as we pronounce, which was no disadvantage, but rather set him off. He studied the law in Gray's Inn, and rose first in the King's Bench practice. He affected also general learning, as History and Theology, and, as great men usually have their vanities, his was to profess of that sort more than belonged to him. And, accordingly, he chose his company, who were for the most part, divines, such as were most eminent in his time, as Tillotson, &c., and, I dare say, they profited more in his company than he in theirs. I have touched his felicities; his infelicity was a penchant towards the anti-court, or rather republican party; and, consequently, must be a favourer of nonconformity; for opposites to government of all kinds seem to make but one party. Whatever his thoughts were,

it is certain this course was wholly out of the way of his aims. He had another great disadvantage, which was timidity; he could not support himself under any apprehension of danger. Once being at his house at Hampstead, about the beginning of Oates's discovery, whether for real or affected fear he knew best, but it is certain he sent an express to his house in London, to have all his billets removed out of his cellars into his back yard, lest the papists, with fire-balls thrown in, should set his house on fire. And as he was apt to be dejected upon melancholy reflections, so on the other side, he was commonly elated and triumphant when he had fairer prospects. But his greatest misfortune was his mistaken politics, for he thought the Crown must needs, at length, truckle to the House of Commons: but this error being common to the whole faction with whom he conversed, it is no wonder it infected him. (*See Howell's State Trials, vol.* viii. *p.* 174.)

THE LAW OF WAGERS.

The general rule is, that wagers are lawful, and that the Courts will enforce them against the party who has lost. There are, however, certain exceptions to this rule,—as where the wager is of so ludicrous and frivolous a nature that it would be beneath the dignity of the Courts to notice them. In the Civil Law such wagers were called

Sponsiones Ludicræ, of which no judicial cognizance could be taken. In our own Courts of Justice, however, actions upon very frivolous wagers have been established. Thus in *Pope* v. *St. Leger*, 1 *Salk*, 344, an action was tried before Lord Holt, upon a wager "whether a person playing at backgammon, having stirred one of his men without moving it from the point, was bound to play it." So Mr. Justice Lawrence held that the plaintiff might recover in an action upon a wager of "six to four that Bob Booty should win the plate, at the New Lichfield races." (*M'Allister* v. *Haden*, 2 *Campb.* 436.) So it was held that an action was maintainable on a wager of a rump and dozen, whether the defendant was older than the plaintiff. It was strongly urged by Mr. Sergeant Vaughan, the Counsel for the plaintiff, that instead of any public prejudice arising from the thing betted, it was for the public benefit to promote conviviality and good humour. The Court of Common Pleas were not very decided in their opinion on the legality of this wager. Sir James Mansfield, with a coyness and modesty very graceful in a Chief Justice, declared that "he did not judicially know the meaning of a rump and dozen."* But Mr. Justice Heath had the can-

* It seems, however, that the Court is bound to take judicial notice of the meaning of a rump and dozen, as

dour to say, "We know very well privately that a rump and dozen is what the witnesses stated, viz. a good dinner and wine, in which I can discover no illegality;" and said Chambre J. "The witnesses have explained the rump and dozen to mean a good dinner, and this is sufficiently certain. Then where is the immorality? Is it impossible for people to sit down to a good dinner without being guilty of excess?" (*Hussey* v. *Crickett*, 3 *Campb.* 168.) But in one case, Lord Ellenborough refused to try an action upon a wager on a cock-fight, observing that it was impossible to be engaged in ludicrous inquiries of this sort consistently with that dignity which it is essential to the public welfare that a Court of Justice should always preserve. (*Squires* v. *Whisken*, 3 *Campb.* 140.) So Lord Loughborough refused to try an action on a wager "whether there are more ways than six of nicking seven on the dice, allowing seven to be the main, and eleven a nick to seven." (*Brown* v. *Leeson*, 2 *H. Bl.* 43.) In the case of Henkin v. Gerss, 2 Campb. 408, which was assumpsit on a wager "whether a person may be lawfully held to bail on a special original for a debt under £40." Lord Ellenborough requested to see the record, and, having perused it, "threw

they are bound to take notice of all English words though merely provincial, and of *vocabula artis*.

it down," as the report states, "with much displeasure." (In fact, he is said to have thrown it at the head of the plaintiff's attorney.) "I certainly will not," said he, "try this cause. I sit here to decide points of law that arise incidentally before me, and the decision of which is necessary for the purposes of justice, not to state my opinion upon any question submitted to me from idle curiosity.—I consider the attempt extremely indecent."

Indecent as this attempt was, others certainly more indecent have occasionally been brought before the Courts. Thus an action was brought on a wager of "200*l.* to 100*l.* that Joanna Southcote would be delivered of a male child before the 1st day of Nov. then next ensuing;" but it appearing that Joanna was unmarried, Gibbs, C. J. refused to try the cause. (*Ditchburn* v. *Goldsmith*, 4 *Campb.* 152.) So it was held that a wager on the sex of the Chevalier D'Eon was illegal. (*Dacosta* v. *Jones*, *Cowp.* 729.) It is laid down by Lord Mansfield, in this case, that where the wager is an incitement to a criminal act, as, "I lay you a wager that you do not beat such a person," or where the subject matter of it is a violation of chastity, or an immoral action, as if "I lay I seduce such a woman," it is illegal.

Wagers against the general policy of the State, or of the Law, are illegal; as, a wager upon the

contingency of a peace between this country and a state with which it is at war. (*Lacaussade* v. *White*, 2 *Esp.* 629, 7 *T. R.* 535 *S. C.*)

There is a singular case of a wager reported in 12 Mod. 416. Grover laid a wager with Wall that he would walk to *High* Park Corner in such a time, but there being no such place as *High* Park Corner, but *Hyde* Park Corner, he could not walk to a place that was not in being, and therefore the Court held that Grover lost his wager.

A bet on the ages of the respective fathers of the parties is good, although one of the fathers is dead at the time, that fact not being known to the parties. (*Earl of March* v. *Pigott*. 5 *Burr*. 2802.)

NOVEL MOTIONS.

A young gentleman newly called to the Bar, and not thoroughly acquainted with legal contractions, had a brief put into his hands with the following indorsement upon it:—

Nokes v. *Styles*. } Instructions.

Mr. Leatherhead, ½ gua.

"To move for a *Common* to examine witnesses."

The young gentleman accordingly moved the Court, "My Lords, I humbly move your Lord-

ships for a common to examine witnesses." "What, Sir?" said the Chief Justice. "I humbly move for a common to examine witnesses." "Pray, Sir," said the Chief, "are your witnesses numerous?" "Yes, my Lord." "Then take Salisbury Plain."

It is not unusual upon circuit for the *desœuvrés* gentlemen to amuse themselves with hoaxing one another. At the Chester Assizes a juvenile gentleman, who had just joined the circuit, received a brief to the following purport: "Mr. ——— To move to set aside the common recovery on the usual affidavit of the death of the Tenant in tail." An application to this effect would certainly have been made to the Court, had not Mr. ——— discovered that "the usual affidavit" was not annexed to his instructions.

A very learned gentleman within the Bar, is said to have moved the King's Bench for two *Mandami*, an application which probably astonished the Court as much as when they were asked to quash a writ "quia improvide *Emanaverunt*."

AMENDMENT OF THE LAW DURING THE COMMONWEALTH.

In a former part of these volumes, a cursory notice was taken of the attempts which were made to effect a reform in the system of our judicature in the time of the Commonwealth. (*Ante, vol.* i. *p.* 17.) We shall now give a few details relative to the same subject, which, in compiling our former observations, were overlooked.

In 1651, a Committee was named by Parliament to consider what inconveniences there were in the Law, and how the mischiefs which grew from delays, and the changeableness and irregularities in Law proceedings, might be prevented. This Committee met several times, and desired the Judges of the different Courts to return to them a list of their officers, what fees they received, and what work they did for them. "A project of infinite use," says Oldmixon, (*p.* 402,) "and fit for the wisdom of the nation to bring to perfection."

In the following year the Committee presented to the Parliament draughts of the following Acts:

1. For taking away fines upon Bills, Declarations, and Original Writs.

2. Against customary oaths of fealty and homage to Lords of Manors.

3. For taking away common recoveries and the

unnecessary charge of fines, to pass and charge lands intailed as lands in fee simple.

4. For ascertaining arbitrary fines upon descent, and alienation of copyhold of inheritance.

5. For the more speedy recovery of rents.

6. Touching Pleaders, and their fees.

7. For the more speedy regulating and easy recovery of debts and damages, not exceeding 4l. and under.

It will be observed, that several of these amendments have been subsequently adopted, particularly Nos. 4, 5, and 7, either by the Courts or by the Legislature; but at the period when they were first introduced they experienced great opposition from the lawyers themselves, who have always imagined themselves interested in upholding the abuses of their profession. "The reformation of the Law went on but slowly in Parliament," says Ludlow, "it being the interest of the Lawyers to preserve the lives, liberties, and estates of the whole nation in their hands; so that, upon the debate of registering all deeds in each county, for want of which within a certain time fixed after the sale, such sales should be void, and being so registered, that land should not be subject to any incumbrance, the word *incumbrance* was so managed by the Lawyers, that it took up three months' time before it could be ascertained by the Committee of Parliament."

In the year 1659, a debate took place in Parliament on the regulation of the Law, and a Bill was ordered to be introduced "to reform abuses in Clerks, Attornies, Solicitors, and Lawyers." It was also referred to the Council, "to take care that the people should not be wronged by Bailiffs and Juries." If we may believe Oldmixon, the conduct of the Lawyers upon this occasion, was not only discreditable but dishonest. "The two parties, viz. the Lawyers and Clergy of that time and stamp, being equally concerned to perpetuate the abuses amongst them, became equally sensible of their common danger, and in order to prevent it, Whitelock and St. John for the Lawyers, Dr. Owen and Mr. Noye for the Clergy, had at this time frequent meetings at the Savoy, and entered into a private treaty with the principal persons of the Wallingford House party, offering to raise 100,000l. for the use of the army, upon assurance of being protected by them in the full enjoyment of their respective advantages and profits, whereby we were left destitute of hope to see any other reformation of the Clergy than what they themselves would consent to, nor any other regulation of the Law than what the Chief Justice and the Commissioner of the Great Seal would permit."

The interest which the country at large took in the amendment of the Law at this period, has been already alluded to. It should, however, have

been added, that the Ordinance for the introduction of the English Language in all Law Proceedings and Reports was the subject of several petitions from the soldiers and country farmers. (*See Kennet, vol.* iii. *p.* 197.)

LORD ELDON AND SERGEANT COCKLE.

On the 4th of July, 1800, a cause was tried in the Court of Common Pleas, against a Sheriff's Officer, for an escape. From the evidence it appeared, that the officer had taken the debtor in London, where the writ was sued out; that the debtor made his escape, and got into the county of Middlesex, where he was again taken; but, in consequence of a mob assembling and threatening the bailiff, with glass bottles, brick-bats, &c. he let go his prey. The defence which the bailiff set up, was, that he had not arrested the debtor in London, and, therefore, could not detain him when he took him in Middlesex. Sergeant Cockle, the counsel for the plaintiff, in his reply, said, that had the officer, instead of alleging a falsehood, come fairly forward, and thrown himself on the mercy of the jury, by saying, it was true he had taken the debtor in London, and, after the escape, had retaken him in Middlesex; but that, from the threats of the mob, he had been obliged to let him go; he, (the counsel,) would have had *his mouth shut.*—He was prevented from proceeding

by Lord Eldon, who observed, "My brother Cockle will excuse me if I interrupt him; he will, I am certain, always do his professional duty in as good-natured a way as any I know; but I cannot give full credit to his present assertion. Had the officer adopted the exact line pointed at, I am very well satisfied, that my brother Cockle, provided he had on his brief the same number of guineas which now are endorsed on it, would not have had his mouth so easily shut."

SINGULAR FORGERY.

"A Clerk of the Chancery joined two clean parchments fit for letters patents so close together with mouth glew, as they were taken for one, the uppermost being very thinne, and did put one labell through them both, then upon the uttermost he writ a true patent, and got the great seale put to the labell, so the labell and the seale were annexed to both the parchments, the one written and the other blank. He cut off the glewed skirts round about, and took off the uppermost thinne parchment (which was written, and was a true and perfect patent,) from the labell, which, with the great seal did still hang to the parchment, then he wrote another patent on the blank parchment, and did publish it as a good patent." (3 *Inst.* 16. *See Co. Rep.* xii. 15. *Kyl.* 80. 138. *Hale's Hist. pl. Cor.* 1. 182.)

Sir William Blackstone observes on this case, that the knavish artifice of this *lawyer*, much exceeded that of the *divine*, who, by taking wax bearing the impression of the great seal off from one patent, and fixing it to another, thereby procured a dispensation for non-residence; and that Sir Edward Coke mentions it with some indignation, that the Chancery Clerk was living at that day. (*Black. Comm.* iv. 83.)

POINTS OF HINDU LAW.

Having already given some account of the Gentoo Code, (*vol.* ii. *p.* 127,) we shall follow up our researches into Indian jurisprudence, by selecting a few points from the Hindu Laws, which have been presented to us in an English dress, by Sir William Jones in his translation of the Ordinances of Menu.

In the Hindu Law of Baron and Feme, we find many judicious enactments. Thus every Hindu is enjoined not to marry "a girl with reddish hair," or "with inflamed eyes," or who is "immoderately talkative," but one who "walks gracefully like a phenecopteros, or like a young elephant." By way of ensuring respect for the Feme in the married state, the Baron is very properly forbidden "to eat with his wife, or look at her eating or sneezing, or yawning, or sitting carelessly at her ease." The gentleman is also him-

self enjoined not "to read lolling on a couch, nor with his feet raised on a bench, nor with his thighs crossed, nor having lately swallowed meat."

The mode of recovering a debt is much the same as under the Gentoo Law. "By whatever means a lawful creditor may have gotten possession of his own property, let the King ratify such payment by the debtor, though obtained even by compulsory means. By the mediation of friends, by suit in court, by artful management, or by distress, a creditor may recover the property lent, and fifthly by legal force."

On questions of evidence the Hindu Code is very diffuse. Many persons are rejected as incompetent witnesses, as cooks, public dancers, and singers, priests of deep learning in scripture, and students in Theology, "one extremely grieved," or one convicted of theft. The punishment denounced against perjury is indeed terrific. "The witness who speaks falsely, shall be fast bound under water in the snaky cords of Varuna, and be wholly deprived of power to escape torment during a hundred transmigrations," and again: "Headlong in utter darkness shall the impious wretch tumble into hell, who, being interrogated in a judicial inquiry, answers one question falsely."

Occasionally we meet with some singular coincidences between the Hindu and our own Code. Thus the law, that "a pledge to be kept only, must not

be used by force," is very like our rule, that a horse taken damage feasant cannot be ridden. So in both Codes, "a contract made by a person intoxicated or insane, is utterly null." So with regard to goods sold in market towns.

Amongst the penal enactments of the Hindus, we find one which we do not remember to have met with elsewhere; a very severe punishment for giving impertinent advice—"Should a man, through pride, give instruction to priests concerning their duty, let the King order some hot oil to be dropped into his mouth and ear." The punishment for adultery is, in some cases, dreadfully severe; the woman is condemned "to be devoured by dogs in a place much frequented," and the man to be "placed on an iron bed well heated, under which the executioner shall throw logs continually until the sinful wretch be burned to death." We shall conclude with the following singular catalogue of persons who "are to be avoided with great care."

"Physicians, image worshippers for gain, sellers of meat, and such as live by low traffick, must be shunned in oblations, both to the deities and to progenitors.

"A public servant of the whole town, or of the prince, a man with whitlows on his nails, or with black yellow teeth, an opposer of his preceptor, a deserter of the sacred fire, and an usurer.

"A phthisical man, a feeder of cattle, one omitting the five great sacraments, a contemner of *Brahmin*, a younger brother married before the elder, an elder brother not married before the younger, and a man who subsists by the wealth of many relations.

"A dancer, one who has violated the rule of chastity in the first or fourth order, the husband of a sudra, the son of a twice married woman, a man who has lost one eye, and a husband in whose house an adulterer dwells.

"One who teaches the *veda* for wages, and one who gives wages to such a teacher, the pupil of a *sudra*, and the sudra preceptor, a rude speaker, and the son of an adulteress, born either before or after the death of the husband.

"A forsaker, without just cause, of his mother, father, or preceptor, and a man who forms a connexion, either by scriptural or connubial affinity, with great sinners.

"A house-burner, a giver of poison, an eater of food offered by the son of an adulteress, a seller of the moon plant, (a species of mountain rue,) a navigator of the ocean, a poetical encomiast, an oilman, and a suborner of perjury.

"A wrangler with his father, an employer of gamesters for his own benefit, a drinker of intoxicating spirits, a man punished for sin with ele-

phantiasis, one of evil repute, a cheat, and a seller of liquids.

"A maker of bows and arrows, the husband of a younger sister married before the elder *of the whole blood*, an injurer of his friend, the keeper of a gaming house, and a father instructed in the *veda* by his own son.

An epileptic person, one who has the erysipelas, or the leprosy, a common informer, a lunatic, a blind man, and a despiser of scripture, must all be shunned.

"A tamer of elephants, bulls, horses, or camels, a man who subsists by astrology, a keeper of birds, and one who teaches the use of arms.

"He who diverts water-courses, and he who is gratified by obstructing them, he who builds houses for gain, a messenger, and a planter of trees, for pay.

"A breeder of sporting dogs, a falconer, a seducer of damsels, a man delighting in mischief, a *Brahmin* living as a *sudra*, a sacrificer to the inferior gods only.

"He who observes not approved customs, and he who regards not prescribed duties, a constant importunate asker of favours, he who supports himself by tillage, a clubfooted man, and one despised by the virtuous.

"A shepherd, a keeper of buffalos, the husband of a twice-married woman, and the remover of

dead bodies, *for pay*, are to be avoided with great care. (*Sir W. Jones's Institutes of Hindu Law, p.* 71.)

TRESPASS FOR INTERMEDDLING WITH A FEME.

There are some curious decisions in the old books relative to this point of law, with which it may be useful to be acquainted. In *Br. Ab. Tresp.* 40, it is said that a man may aid a feme who falls upon the ground from a horse, and so if she be sick, and the same if her baron would murder her. And the same *per Rede* if the feme would kill herself. And *per Fineux* a man may conduct a feme on a pilgrimage. So where a feme is going to market, it is lawful for another to suffer her to ride behind him upon his horse to market. (*Br. Ab. Tresp.* 207.) And if a feme says that she is in jeopardy of her life by her baron, and prays him (a stranger) to carry her to a justice of peace, he may lawfully do it. (*Br. Ab. Tresp.* 207.) But where any feme is out of the way, it is not lawful for a man to take her to his house, if she was not in danger of being lost in the night, or of being drowned with water. (*Br. Ab. Tresp.* 213.)

JEFFERIES AND DR. FAIRFAX.

In the dispute relative to the election of the President of Magdalen College, Oxford, when the Fellows resisted the commands of James II. to

elect Farmer, a man of bad reputation, who had promised the King to declare himself a Papist, Jefferies was one of the ecclesiastical commissioners, before whom the Fellows were cited to appear. Several of the Fellows offered their reasons on paper to the Lords Commissioners, but Dr. Fairfax not consenting to it, desired their Lordships to hear him apart, and to take his reasons why he could not subscribe. "After the reading of the answer, the Lord Chancellor Jefferies being in hopes he would submit, gave him leave to speak, saying, "*Aye, this looks like a man of sense, and a good subject; let's hear what he will say.*" But finding his mistake, and that Dr. Fairfax chiefly insisted that in ecclesiastical causes there should be a *libel given to the party appealed, that he may know what he is accused of; that he desired that libel, and did not know what he was called there for, and that the matter did not lie in that court, but in Westminster Hall.* The Lord Chancellor endeavoured to baffle his plea, by telling him *He was a Doctor of Divinity, but not of Law.* To this the doctor replied, *that he desired to know by what commission and authority they sate,* which put Jefferies into such an excessive passion as made him cry out, *Pray, what commission have you to be so impudent in court? This man ought to be kept in a dark room. Why do you suffer him with-*

out a guardian? Pray, let the officers seize him." (*Kennet's Complete History, vol.* iii. *p.* 504.)

SETTLING A CAUSE OUT OF COURT IN IRELAND.

A suit, involving some family transactions, having come on for hearing before Lord Manners, "Pray, Mr. ————," said his Lordship, addressing himself to the counsel, "should not this cause be settled out of court?" "That's just my own opinion, my Lord," exclaimed the defendant, starting up, "and is'nt it the way I always wished to settle it? Was'nt it this morning I sent my friend to my cousin the plaintiff, to tell him I was ready to give him satisfaction, if he thought I had'nt properly administered my father's will? and did'nt he *refuse* to meet me?"

THE END.

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LORD ERSKINE.

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